

CONCLUSION OF MORNING
BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

TERRORISM RISK INSURANCE ACT
OF 2002

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of S. 2600, which the clerk will report.

The senior assistant bill clerk read as follows:

A bill (S. 2600) to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I want to shortly yield to my colleague, the chairman of the Banking Committee, for an opening statement he may wish to make on this bill.

Mr. President, just for the order of business, we will probably take a few minutes with some opening statements this morning on the bill, although I think over the months there has been a lot of knowledge about what is involved. I know the Presiding Officer has an amendment and is interested in the subject matter. I think Senator KYL may have an amendment he wants to offer fairly soon. Senator GRAMM from Texas, obviously, is very familiar with the bill.

My hope is that colleagues who have amendments would, first of all, let us know what their amendments are. That would be helpful. I do know what many of them are already. There may be others. So I would ask staffs of Members of both parties if they would get to the ranking member or the manager of the bill the amendments from both sides so everyone has an idea what we are looking at over today and possibly tomorrow and/or however long it takes to get this done.

My hope is they would be relevant amendments, that we would stick with the subject matter at hand rather than using this vehicle to bring up extraneous matters.

With that said, let me turn to the chairman of the full committee. I thank him. I will make a longer statement in a few minutes myself. But I certainly thank the majority leader, Senator DASCHLE. I want to thank the minority leader, Senator GRAMM has been deeply involved.

Certainly the chairman of the committee, Senator SARBANES, has been involved in this issue from the very beginning. Going back to last fall, when we tried to sort this out, he made a Herculean effort to bring it together. When we do these things, it becomes difficult because we get 97 other people, as I mentioned yesterday, who all have something they want to add to the discussion and debate. As a result of that, a good effort did not work out as well as we wanted initially, but I think a better effort may prevail as a result of more people being involved.

So while we have lost some time, I think the product we are putting before the Senate today is actually a stronger proposal.

With that, I will turn to my colleague from Maryland.

Mr. REID. Will the Senator from Maryland yield to the Senator from Nevada to make a brief statement?

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. I yield to the Senator from Nevada.

Mr. REID. Mr. President, I, on behalf of Senator DASCHLE, alert everyone, as Senator DODD has done, that we want to have ample opportunity for everyone to offer any relevant amendments. We think it is very important that if people believe this bill isn't what it should be, they have an opportunity to make it better. But I hope that everyone understands we are not going to wait forever to move on cloture if it appears people are stalling, trying to kill the bill, through amendment or otherwise.

There will be ample time for amendments, I repeat. But we are not going to stand around here for hours at a time in wasteful time. We have so much to do.

The last week before the July recess we have to spend on the Defense authorization bill. We have to do that. And that leaves next week to complete everything else that needs to be done.

So I say to everyone, if they have amendments, come over and offer them. Senator SARBANES and Senator DODD have worked on this legislation for months. We almost had it done before Christmas of last year. Senator DODD and I have offered numerous unanimous consent requests so we could move forward on this more quickly.

So I repeat, for the third time, as I did when the Senate opened this morning, we want to have a bill that comes out of the Senate, and we are going to get one, one way or the other. We hope it would be done with people cooperating, trying to improve the legislation; when they offer an amendment, and it does not pass, or it is tabled, that they do not start crying and say: Well, I am going to kill the bill then.

This legislative process is what it is. This legislation is important. We are going to do everything we can to move it expeditiously.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I commend my colleague, Senator DODD, for his leadership on this very important issue. I have joined with him in cosponsoring the legislation he has introduced, S. 2600, which is now before the body. I thank Senator DASCHLE and Senator REID for moving the Senate to this issue, and we appreciate the willingness of the other side of the aisle to cooperate in that endeavor.

This bill is now open to amendment, and we hope as we move forward today,

in short order, that those who have amendments will be offering them and that we will be able to consider them as we address the important issue contained in the legislation.

This legislation is designed to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism. It obviously stems from the attacks of September 11 which raised a very large question about the future availability of property and casualty insurance for terrorism risk.

Shortly after those attacks, the administration, interacting with the Congress, put forward certain ideas for addressing this issue, and there has been an effort to try to deal with this issue over the intervening months. It is a difficult and complex question. A number of questions have been raised with respect to it. Hearings have been held by more than one committee in the Congress on both the House and the Senate side. The Banking Committee held hearings in late October in which the witnesses who appeared acknowledged the need for legislation and agreed that the future availability and affordability of terrorism insurance would be placed in jeopardy absent congressional action.

Many have outlined the potential negative consequences for the U.S. economy from the financial instability which would arise if terrorism insurance were not available.

That view is reflected in the congressional findings on which the Terrorism Insurance Act rests. Let me quote briefly from those findings. It is very important to lay the basis as to why we are trying to move this legislation. I quote:

Widespread financial market uncertainties have arisen following the terrorist attacks of September 11, 2001, including the absence of information from which financial institutions can make statistically valid estimates of the probability and the cost of future terrorist events and, therefore, the size, funding, and allocation of the risk of loss caused by such acts of terrorism.

A decision by property and casualty insurers to deal with such uncertainties, either by terminating property and casualty coverage for losses arising from terrorist events or by radically escalating premium coverage to compensate for risks of loss that are not readily predictable, could seriously hamper ongoing and planned construction, property acquisition, and other business projects, and generate a dramatic increase in rents and otherwise suppress economic activity.

The findings go on to say:

The United States Government should provide temporary financial compensation to insured parties, contributing to the stabilization of the U.S. economy in a time of national crisis, while the financial services industry develops the systems, mechanisms, products, and programs necessary to create a viable financial services market for private terrorism risk insurance.

That basically sets out the problem we are trying to address with this legislation.

There is recent evidence that property and casualty insurers are excluding terrorism coverage from the policies they write. The U.S. General Accounting Office recently analyzed the terrorism insurance market and found that, and I quote:

... some sectors of the economy—notably real estate and commercial lending—are beginning to experience difficulties because some properties and businesses are unable to find sufficient terrorism coverage, at any price.

Furthermore, where terrorism insurance is available, it is often expensive and significantly limited in both the amount and the scope of the coverage.

The consequence of all of this is that you have a number of properties currently either uninsured or underinsured. And the potential consequences of this situation, if left unaddressed, are cause for serious concern. That is why we are here today.

In the event of another attack, a widespread lack of insurance coverage could hinder recovery efforts as property owners struggle to meet the costs of rebuilding without the support of insurance. As the GAO noted, property owners “lack the ability to spread such risks among themselves the way insurers do,” and, as a result, I am quoting the GAO:

... another terrorist attack similar to that experienced on September 11th could have significant economic effects on the marketplace and the public at large. These effects could include bankruptcies, layoffs, and loan defaults.

The GAO also found that even in the absence of further terrorist activity, even in the absence of it, inadequate insurance coverage could have an adverse effect on the willingness of lenders to finance new construction projects as well as the sale of existing property. Already the GAO found:

[s]ome examples of large projects canceling or experiencing delays have surfaced with a lack of terrorism coverage being cited as a principal contributing factor.

The GAO concluded that “the resulting economic drag could slow economic recovery and growth,” even if the terrorist attack does not materialize.

So we have a problem either way. If the terrorist attack should materialize, the lack of coverage would markedly hinder recovery efforts. But even if it doesn't, you have an economic drag taking place because of the unwillingness of lenders to finance new construction projects as well as the sale of existing projects.

Most people seem to believe that in time, the insurance industry will be able to underwrite the terrorist risk. But they don't now, at this point, have the experience and the factual basis on which to make those calculations. In the meantime, a short-term Federal backstop for terrorism insurance would help to stabilize the marketplace and forestall the potential negative consequences which I have just quoted, identified by the GAO.

The legislation we have before us, which Senator DODD has brought to the

body, works off of the proposals that were developed by the administration late last year. This Terrorism Risk Insurance Act establishes a shared compensation program that will split the cost of property and casualty claims from any acts of terrorism during the next year between the Federal Government and the insurance industry.

The act would terminate at the end of the year, unless the Treasury Secretary determines that the program should be in place for an additional year. So it is, by its very definition, short term. The premise of it is that over that period of time the insurance industry will be able to develop the knowledge, the expertise, and the capability to underwrite the terrorist risk. Under this legislation, the definition of an act of terrorism will be uniform across the country. Insurance companies providing commercial property and casualty insurance are required to participate in the program; voluntary participation is allowed with respect to personal lines of property and casualty insurance. Participating insurance companies must offer terrorism insurance coverage in all of their property and casualty policies for all participating lines. Each participating insurance company will be responsible for paying a deductible before Federal assistance becomes available. So the first dollar will come from the insurance industry.

In the first year of the program, the amount of the deductible is determined by dividing \$10 billion among participating insurance companies based on their market share. If the Secretary calls for a second year, the deductible will be determined by dividing \$15 billion among participating insurance companies based on their market share.

For losses above the companies' deductibles, but not exceeding \$10 billion, the Federal Government will pay 80 percent, and the companies will pay 20 percent. For any portion of total losses that exceeds \$10 billion, the Government will cover 90 percent and the companies will cover 10 percent.

Losses covered by the program will be capped at \$100 billion. Above this amount, it will be up to Congress to determine the procedures for and the source of any payments.

This framework provides to the insurance industry the ability to calculate at the top level what they may have to cover in damage. Therefore, it gives them the ability to calculate what the premiums ought to be and to structure a properly arranged financial system. We do that, of course, by providing that above certain levels the Federal Government will assume 80 or 90 percent—depending on the figure—of the losses.

I think this is a fairly simple program. We have had a lot of complex suggestions made to us—some extremely complex, I may say. I think this is pretty straightforward on its face. It is limited in its duration.

One of the guiding principles in the bill that I think is important is that, to the extent possible, State insurance law should not be overridden. We seek to respect the role of the State insurance commissioners as the appropriate regulators of policy terms and rates. We are anxious to try to keep the State insurance commissioners in the picture. That is where the responsibility has heretofore been. There is not an effort in this bill to make any radical change in that existing arrangement.

In conclusion, I think the Congress needs to act on this issue. We run the risk of serious damage to our economy. I know there are many steps between now and final enactment of the legislation. We look forward to continuing to consult with the administration over this matter, as we have been doing. But, again, I commend Senator DODD for his extraordinary work in crafting the bill that is before us and getting it before the Senate.

Yesterday some reference was made to some of the procedural problems that we encountered on the way to the floor. But through the actions of Senator DASCHLE and the concurrence of Senator LOTT, we are here now with the legislation before us, and the Senate now has an opportunity to address this very important issue. I hope we will now be able to consider amendments on their merits, dispose of them, and then move to final action on this legislation.

Again, I underscore the fine work that Senator DODD has done on this legislation from the very beginning and, certainly, in bringing us to this point today.

I yield the floor.

Mr. DODD. Mr. President, I thank my colleague from Maryland very much. As I said a few moments ago, but for his involvement as chairman of the Banking Committee, we would not have been able to produce this product. He is an original sponsor, along with Senator SCHUMER and Senator CORZINE, of S. 2600. I would like to do this.

BILL NELSON, my colleague from Florida, wants to be heard on the bill. Senator SCHUMER is here as well. I gather some others are ready to come over to offer the lead amendment. That will be the manner in which we will probably proceed. I know Senator SCHUMER has an ongoing Judiciary Committee meeting. I want to accommodate Members.

I will yield to my colleague from New York, with the indulgence of my colleague from Florida, to allow him to make opening comments, and then I will turn to Senator NELSON. I will make comments myself later so other Members can go back to the hearings, and then we will deal with the amendment process.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. SCHUMER. Mr. President, I thank my colleague from Connecticut. I will have more to say in a general nature, and I will probably do that during the amendatory process.

First, I thank our chairman of the Banking Committee, Senator SARBANES, as well as Senator DODD, and he, in particular, for his leadership on this issue; it has been second to none.

We desperately need this bill. I also thank the White House for their involvement. They have recognized the problem and have stepped to the plate. I recognize Senator LOTT, as well as many of my colleagues on the other side who see this as a problem. I will make a couple of brief points.

First, this is vitally needed—desperately in my city. We have example after example of projects not being prefinanced, several defaulting, and projects delayed or not undertaken because of the inability of people to get terrorism insurance. Lenders will not yield, will not give loans to projects of large economic agglomeration, whether they be in large cities or places such as Disneyland, Disney World, and Hoover Dam, unless we solve this problem. It has already begun to slow down the economy.

As the chairman said, construction workers are being laid off and construction jobs are declining. This is a sore on the economy. It is an open cut. Every day that we don't solve it, more blood comes out of the wound.

In my city and in my State, this is essential. Obviously, we were the nexus of the terrorist attack on 9-11. Insurance rates are going through the roof. Some of that is not caused by the lack of terrorism insurance, but some of it is. It is vital that we solve this problem. Just the other day we got a call from a developer refinancing an average office tower on Third Avenue, with a \$3 million increase in insurance. Another friend owns smaller properties. A third of his cashflow will be eaten up by insurance. He will not build or rehabilitate another building. So this is an issue of jobs. It is vital—vital to America, vital particularly to our large cities, including New York.

I will make one final point, and I will make the balance of my points later. Each of us has other things that we would like to do. Each of us may have our own proposal—a different type of proposal. We could probably come up with a hundred solutions to this problem. I had a proposal supported by Secretary O'Neill that would have gone much further. It would be easy to stand here and say this solution is not the whole solution.

If each of us pushes in our own direction, we will get no bill. The same is true for those who wish to make this a test of tort reform. Please, please, I plead with my colleagues, do not have this proposal wrecked on the shoals of tort reform as so many other proposals. The Patients' Bill of Rights comes to mind. Yes, we can have a fight on tort reform. There are strongly held views. It ought not be on this bill. It will sink this bill.

I argue to my friends, anyone who tries to put the burden of tort reform on this proposal, this proposal's shoul-

ders are not broad enough to carry that. If you do, you will sink the bill. You will hurt our economy.

In conclusion, Mr. President, this is a test in our post 9-11 world: Can this body deal in a bipartisan way with complicated issues that are vital to our future even if the immediate impact is not seen? That relates to a whole lot of other issues as well. We have to be in a new frame of mind. We have to come together. This is crucial legislation, even though it is not on the lips of the average American citizen, and I urge my colleagues to support it.

I once again thank my colleague from Connecticut for his graciousness in yielding me a couple of moments. I will speak at length under the amendatory process. I thank him for his leadership, as well as our chairman and Senator DASCHLE for bringing this bill to the floor. It is at the 11th hour. It is not too late yet. It will be if we do not get this bill done in the next few days.

Mr. DODD. Mr. President, I thank the Senator from New York.

How much time does the Senator from Florida request for general comment on the bill?

Mr. NELSON of Florida. Yes, I would like to make an opening statement and have 10, 15 minutes.

Mr. DODD. Why don't I say 10 minutes? The Senator from New Jersey wants to be heard. I need to be heard. We have other Members who want to be heard. This will keep the process moving. If the Senator gets to 10 minutes and there is something that has to be said, I will add a few more minutes.

Mr. NELSON of Florida. Would the Senator like me to defer and let the Senator from New Jersey proceed? Once I get on a roll, I do not want to stop.

Mr. DODD. We do not want you to stop. We do not want you on too long a roll. We want a 10-minute roll.

Mr. NELSON of Florida. I understand the Senator wants to limit my roll, and I do not want you to limit my roll.

Mr. DODD. That is R-O-L-L, not R-O-L-E.

I yield 10 minutes to the Senator from Florida.

Mr. NELSON of Florida. Mr. President, something this important should not have a limit of 10 minutes. I accept the good nature of the prime sponsor of the bill. Basically, we are here talking about making insurance available and affordable. After September 11, we ended up having something that was neither: not available nor affordable. As a matter of fact, one only has to look to the front page of the Washington Post today. This is chronicling what has happened:

Insurance rates rise in DC. They soar downtown. Coverage more limited since September 11.

That is the headline from today's Washington Post. It points out that in the downtown area, there is a hiking of rates. One example given by the Washington Post is 160 percent. I can give innumerable examples—and I will in

the course of this debate—of multiple hundreds of percent in rate hikes, and thus that brings us to this point of considering this legislation.

I want the sponsor of the bill, Senator DODD, to listen. I want to direct something to him so that he knows my good faith.

I was sitting in the chair presiding last evening when this matter was brought up. A unanimous consent request was presented. Even though I was seated in the chair, in my capacity as a Senator from Florida I could have objected. I did not object because of the good faith he and I both have over the issue, that this is an issue that ought to be hashed out, it ought to be discussed, it ought to be thoroughly debated, and then the amendatory process can work its will in the Senate. It is in that atmosphere of good faith that I go forward.

I think the bill offered by the Senator from Connecticut is significantly flawed, although I think it is a good-faith attempt. It is trying to address a problem, and the problem is what we all know of September 11. But several things have happened since September 11 in the insurance marketplace. The marketplace has responded. Capital is flowing big time into the reinsurance companies, reinsurance being an insurance for insurance companies against catastrophe; in this case, the terrorism risk.

In the aftermath of September 11, when we thought this was going to be a problem endemic to the whole country on any kind of commercial building or large structure that might be a target of terrorists, what we have found in the 8 or 9 months since is that the marketplace has responded. Reinsurance companies have provided the coverage, and the cost of that reinsurance for this kind of catastrophe has been coming down and down as more money has flowed into the reinsurance marketplace. As a result, we do not have to kill a bumble bee with a big stinger with a sledgehammer. Instead of us having a bill that applies across the board, what we ought to be doing is riflershooting where the problems are.

The Senator from New York just stated several examples. Certainly his constituency of Manhattan is a place where they are having difficulty getting insurance for tall buildings. So, too, would be large structures such as a football stadium, a baseball stadium. So, too, would be in my home State major identifiable high-visibility targets, such as the crowds that go to Disney World, major tourist attractions. Airports would clearly be another one, and I can go down the line.

That does not mean that every little commercial building, every medium-sized commercial building, every strip mall, every air-conditioned mall, in fact, cannot get terrorism insurance, because they can. The marketplace has responded.

We are coming to the floor with a bill that is fatally flawed because it is

overreaching the problem, and the problem is certain types of buildings that need coverage from terrorism. Let's examine that.

What kind of terrorism? Most insurance policies already have an exclusion for chemical, biological, and nuclear devastation. So if those insurance policies are not covering chemical, biological, and nuclear terrorism, what kinds of terrorism are we talking about that an insurance company would cover? We are talking about the use of conventional weapons; what we so horribly learned on September 11, which is the use of an airplane or the use of explosives as they tried to do in the early nineties at the basement of the World Trade Center. Those are the things about which we are talking.

When one takes the application of conventional explosives and applies it to commercial buildings, does the insurance marketplace today respond with the coverage? My contention is, yes, it does. The insurance marketplace is not going to respond to chemical terrorism, biological terrorism, or nuclear terrorism because that is already exempted in most policies, with the result that the bill is overreaching because of it trying to apply to the whole country when, in fact, we have certain structures that are indeed threatened and the marketplace cannot respond to that. That is the first flaw of this bill.

The second flaw of this bill is that it contains no provision to protect consumers from rate gouging. It is not there. I am going to offer an amendment later on in the process that will limit the rate increases, that will have the Secretary of the Treasury, after consultation with the insurance commissioners of the 50 States, through their organization, the National Association of Insurance Commissioners, set a range of where the rates should be. That, by the way, is very similar to what the insurance commissioners do in the 50 States on commercial policies. They set a range or a band of where that insurance rate premium ought to be.

The problem with terrorism insurance is, the insurance commissioners have difficulty figuring out what ought to be the rates, because the traditional way of determining if a rate is actuarially sound is by experience and by data, and we do not have hardly any experience except for what happened on September 11. Therefore, that is why I am going to offer an amendment later on that is going to point out that the best way of determining what the rise in rates ought to be to cover the terrorism risk would be through the advice to the Secretary of the Treasury who is prominent in Senator DODD's bill as being the place of limiting the rate hikes. The fatal flaw is this bill overreaches and this bill does not have any provision to protect consumers for rate gouging.

I see the Presiding Officer is starting to twist in the seat as if my 10-minute

time limit is up, which is exactly what I thought was going to happen, but I am just getting into my speech.

The PRESIDING OFFICER. The Senator is correct.

Mr. NELSON of Florida. I am going to need to stop—

Mr. DODD. I say to the Senator, there are other Members who want to be heard.

Mr. NELSON of Florida. I do not want to hold up the Senator from New Jersey. Why don't I stop and I will come back after he finishes his statement.

Mr. DODD. Fine. Any Senator can speak for as long as they want. There are no limits under this bill. If the Senator wants to talk, go ahead and talk. I am trying to move the process along. I know the Senator has an amendment he wants to offer on the subject matter itself, so I will be glad to yield to him a few more minutes now if he would like to finish up rather than break the flow of his remarks. I am trying to see to it that we do not delay the process any longer than we have to, so we can get to amendments and vote on them and then go on to other business.

Mr. NELSON of Florida. I assure the Senator, as he knows, I am going to be heard on this subject. I have not even started to talk about the amendment. I will hold that until I actually offer the amendment, but I do not want to hold up the Senator from New Jersey if he needs to go back to committee. Why don't I sit down and I will seek recognition right after he finishes.

Mr. DODD. I must say to my colleague, I am going to be heard on the bill itself after he gets finished. Then I presume someone may show up on the other side. We have not heard from anybody on the other side. We have been dominating the debate, so I caution my colleague that he may find himself waiting a little bit.

Mr. NELSON of Florida. I ask unanimous consent that I have another 10 minutes.

Mr. DODD. That is fine.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NELSON of Florida. I thank the Senator from Connecticut.

So where are we? Why do we need a bill such as this? I think there is a legitimate question that the risk of terrorism is something that heretofore among insurance companies was not covered. Basically, we never anticipated what happened. Now we have this threat facing us.

The Senator's bill, in fact, says that because terrorism is such, as we would say in the South, an odoriferous act or one that is so repugnant, akin to an act of war, that the Federal Government has a basis for stepping in and insuring part of the risk. Thus, the Senator's bill, through a process of either an 80/20 split or a 90/10 split with the higher figure of 80 or 90 percent being picked up by the Federal Government of the terrorism risk, thus that is then a protection for insurance companies or it is

another means of insuring against the terrorism risk.

I think that is reasonable. I think when we deal with this mass of losses it is very difficult to insure against in certain areas. But if we look at how this vast but strong economy, this free marketplace that provides insurance, and insurance against catastrophe, has responded, it has responded for most cases except the ones we have enumerated.

Any responsible legislation should explicitly require assurances of reasonable premium rates, as we respond to this new kind of risk. That is lacking in this bill, and the evidence continues to mount that insurers are unjustifiably increasing the premium prices, and they are going to continue to do so even with a substantial Government backstop that is being provided in this bill.

I, again, call attention to a story in this morning's Washington Post where it talks about how the insurance rates have gone up in downtown Washington. Again, it is not because of the chemical, biological, or nuclear threat. The article talks about the "dirty" nuclear bomb. That is not going to be covered under these insurance policies. These insurance policies have increased rates presumably to cover the terrorism risk only from the conventional kinds of explosives.

I have received a note that Senator CORZINE has to leave now, so I yield to the Senator so he can make his remarks.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Let me say to my colleague from New Jersey, I thank him for cosponsoring the bill. He has been an invaluable asset in putting this proposal together. Senator CORZINE is a new Member of this body but, as all of us in this Chamber know, and his constituents know, he spent a very distinguished career in the area of finance and was the leader of one of our great leading investment banks in the world and brings a wealth of experience and knowledge into any subject matter but particularly ones involving a subject matter as complicated as the issue of this bill, terrorism insurance. So I wanted to express publicly to him my sincere sense of gratitude for his tireless efforts, going back many months now, in dealing with this issue. He has very valuable suggestions and input that has contributed to this product. We would not have put together, I think, as good a bill as I think we have without his input and his involvement. So I wanted to express my gratitude to him and I look forward to working with him.

Mr. NELSON of Florida. Mr. President, do I still have the floor?

The PRESIDING OFFICER. The Senator has the floor.

Mr. NELSON of Florida. I would propose that to accommodate the Senator, since he has to leave, we yield some

time to him with me still retaining the floor so I can finish my remarks. I am trying to be accommodating, but I still have not completed my remarks.

Mr. DODD. That is fine.

Mr. NELSON of Florida. With that understanding, I yield to the Senator from New Jersey.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from New Jersey.

Mr. CORZINE. Mr. President, I rise today to join my colleagues in support of S. 2600.

Let me begin, by applauding the majority leader and Senator DODD for exerting the necessary leadership, and doing what needed to be done to bring this bill to the floor. Now, it is time for all Members of the Senate to recognize the urgent need before us, and move to act on this bill.

The tragic events of September 11 highlighted the enormous exposure that insurance companies would face in the event of future terrorist attacks.

In this time, when we receive different terrorist alerts almost weekly, and we are faced with the uncertain nature of future attacks, many insurers and reinsurance firms have concluded that terrorism is no longer an insurable risk.

As a result, late last year, many insurers announced that they would no longer provide coverage for terrorism-related losses. Without access to reinsurance coverage, primary insurance companies now find themselves subject to the full exposure of terrorism risk.

This issue is not new. Many of us first learned about them in October of last year. And it left many concerned. While we all knew that it would be impossible to predict the true impact of the lack of terrorism insurance on our Nation's economy, there was overwhelming agreement among scholars, economists, and participants in our economy—that this issue had the potential to pose real problems in some economic sectors.

The threat that loomed led to hearings in the Senate Banking Committee, and it fueled discussion among Members in the Senate about how to best craft a solution before the end of last year when 70 percent of reinsurance contracts were up for renewal.

There was considerable debate about how, and what, that response should be. We debated the proper role of the Federal Government in ensuring that commercial insurers could provide terrorism insurance, knowing that their ability to cede some of that risk to reinsurers had all but vanished.

Many Members of this body, people like Senator DODD, Senator SARBANES, Senator GRAMM of Texas, Senator HOLINGS, Senator SCHUMER, Senator ENZI, Senator NELSON of Florida and myself put forth ideas on how to accomplish that.

And let's be clear, there was a great deal of difference in the ways members thought we should approach this problem. But behind those differences,

there was a singular purpose to solve the problem.

I think we all were determined not to engage in partisan politics or to undermine a possible solution by promoting pet policy priorities. Everyone I just mentioned didn't agree on every aspect of the product that was eventually produced. I certainly didn't.

But, ultimately, everyone agreed that we should act to bring a proposal to the floor, with an expectation that amendments would be offered, including amendments that dealt with tort and liability issues.

The proposal that was presented late last year—late last year was not simply the result of a bunch of Democrats getting in a room and saying "Voila." It was the result of serious discussion and negotiations between Democrats and Republicans and there was considerable input from the State insurance commissioners, this administration and the Treasury Department.

In fact, the Federal backstop provisions of this bill had more than input of these folks it had their support. The bill we are debating today is that same proposal.

Now we have an opportunity to respond to this growing emergency.

If we fail to act, or if this bill becomes stalled by those seeking to pile their pet policy priorities onto a measure that at its core seeks to provide relief to American businesses, then our economy will be harmed.

Every day that passes without our action, leaves American businesses, development projects, workers and vital infrastructure exposed to potentially devastating losses, and that's a real threat to our economic recovery.

In fact, the lack of terrorism insurance coverage has already begun to create a drag on commercial lending and business activity. In April, the Federal Reserve Board surveyed commercial loan officers regarding their recent lending activity and terrorism insurance. The responses are troubling to say the least.

The report indicated that 55 percent of banks had not received applications to finance "high profile or heavy traffic commercial real estate properties." In fact, two national lenders have completely stopped making loans to these types of properties—GMAC Commercial Holding and Mutual of Omaha—together.

The report also states that 20 percent of banks reported weaker demand for new commercial real estate financing. And while not referenced specifically in the Fed report, we know that some existing commercial borrowers may be in technical default on loan covenants because they lack terrorism coverage.

Each of these elements reflects the economic threats that are posed by the lack of affordable, comprehensive terrorism insurance coverage. The threat that accompanies the decrease in commercial lending and subsequently to development translates to one thing: the loss of jobs.

But there is more. The lack of terrorism insurance coverage is also affecting our securities and our bond markets.

According to the Bond Market Association, to date, \$7 billion worth of commercial real-estate loan activity has already been suspended or cancelled due to problems related to terrorism insurance, that is 10 percent of the commercial-mortgage-backed-securities (CMBS) market.

And overall, CMBS activity is down a staggering 26 percent in the first quarter of this year. That level of decline in commercial investment activity is disturbing to think of when you consider that that sector was one of the ones that remained strong throughout last years' recession.

And there is even more to illustrate the there is an economic consequence that accompanies our failure to act on this issue.

Last month, Moody's Investors Service issued an opinion indicating that it is preparing to downgrade billions of dollars of debt of large loan transactions, commercial mortgage-backed securities, particularly on high-risk and "trophy" properties in the near future if we fail to pass this legislation.

The American Academy of Actuaries reports that "there is a reluctance to finance [development] projects of \$100 million or more, and some investors are reluctant to buy bonds tied to individual office towers, apartment building and shopping malls."

And a report issued last month by the Joint Economic Committee offers data illustrating the economic drag that higher insurance costs, for terrorism and non-terrorism related coverage, is having on American business. The report calls these factors "a one-two punch" that is proving harmful to America's economy.

That report cites data from the Commercial Insurance Market Index, which indicates that premiums for commercial insurance policies have increased by 30 percent in first quarter of this year. And those increased costs are in addition to the increased costs of obtaining terrorism insurance, a real cost burden to our businesses.

The report cites the example of a building in my state, New Jersey, which prior to 9/11 had an \$80 million insurance policy that included terrorism coverage at a cost of \$60,000. The new policy for that building has a premium of \$400,000 for property-casualty insurance and another \$400,000 just for terrorism insurance.

That's a dramatic increase for the same coverage. And that building's lucky at least they got fairly comprehensive coverage. Many others find themselves facing similar cost increases for half the coverage.

In either case, these costs undermine productivity and any growth or investment opportunities that the owners could possibly take on. And it is nationwide trend.

I want to reiterate that point. Because this is more than a Northeast, an

urban, or a "big city" issue. The inability of business and organizations to obtain terrorism insurance coverage is truly a national problem.

Consider this:

In Cleveland, the insurer for the Cleveland Municipal School District has notified the district that its new policy will exclude losses due to terrorism.

In Seattle, the Seattle Mariners baseball team had difficulty securing \$1 million in terrorism insurance coverage for their \$517 million stadium.

The St. Louis Art Museum's insurer informed that museum that it would no longer be covered for terrorism losses. That could well prevent touring shows, and undermine tourism in that city.

And a collection of Midwestern airports reported that their aviation liability premium increased close to 300 percent post 9/11 and those policies excluded terrorism losses.

Last year, when this issue first surfaced, we tried to move a bill forward, but that process didn't take hold. Many members believed this issue wasn't a problem for them that it wasn't in their back yards.

We know better than that now. At least I hope we all do.

The impact of the lack of terrorism insurance is being felt in cities and towns all throughout America. And so I say to all my colleagues this is an issue that affects your state and your constituents.

If there's a port in your state, your affected. If there's a bridge or a tunnel in your state, you are affected. If you have an airport or railway system in your state, you are affected. If you've got an NFL, NBA, NHL or Major League Baseball stadium or arena in your State, you're affected. If you've got a college football stadium in your State, where tens of thousands of people gather on Saturdays to root for their team and sing their alma mater, you're affected.

It is time to stop the stalling, stop the games and time for us to pass an interim federal backstop to ensure against future acts of terrorism.

It is time for us to pass this bill, and I strongly urge my colleagues to support it.

I thank the Senator from Connecticut for his efforts and persistence in this endeavor. I look forward to helping him as this process goes forward.

Again, I thank my colleague from Florida for being generous and respectful, giving me the opportunity to present my remarks.

Mr. NELSON of Florida. Of course, the Senator from New Jersey is one of the great new bright lights of this body. What a privilege it is for me to serve with him. What a privilege it is to have the value of his opinion.

I agree with everything he said. Now the question is, how do we get from here to there, to protect everybody and protect the consumer as well from

being gouged with the price hikes, because even though the people who pay these premiums in fact are the owners of these large commercial structures, guess what happens when they have to pay the increase of a premium hike. That is passed on to the consumers.

That is the case I am making, that we have to have this insurance available—and we are in large part doing that by the mechanism of this bill, so the Federal Government provides the insurance for the risk to the tune of 80 percent or 90 percent. But in the process of what we are going to charge for the portion that is covered by the insurance company, that is going to be passed on to the consumers.

Ultimately, I will offer an amendment that will call for a range, as determined by the Secretary of the Treasury, as to what can be charged, where that premium, going into an insurance company, will be separated for accounting purposes, it will be segregated, so it will not be mixed up with all the other premiums for a slip and fall and dog bites and all kinds of liabilities. It will be separate, so it will be under the glare of the full light of day as to how much premium is there, and therefore the Secretary of the Treasury, with the advice of the National Association of Insurance Commissioners, can determine what is a range—not a specific amount, but what is a range that is fair and affordable. That is the place I am going.

The only effective way to guarantee that the rates will be stabilized under this circumstance is to federally regulate the premium rate for the risk of terrorism. Why Federal? Because the 50 insurance commissioners do not have the data to do this. And the Federal Government is picking up the biggest part of the risk under this bill. Remember, it is only the risk, basically, from conventional kinds of terrorism because chemical, biological, and nuclear terrorism is exempt from most commercial insurance policies. So that is not a risk we are going to be protecting.

The Secretary of the Treasury is in the best position to consult with the actuaries and to determine the actual financial risk insurers would assume under the bill. If the Congress commits billions of taxpayer dollars and mandates no real rate protection, we will have shirked our responsibility to the taxpayers and to the consumers.

We gnash our teeth around here on politically charged issues such as raising taxes. Let me tell you, as an insurance commissioner for 6 years, there is an issue that is more explosive to the consuming public than the raising of taxes, and that is the raising of their insurance premiums.

So I call to the attention of the Senate that as you consider a bill such as this that has no mechanism by which to stop those rate hikes, you had better think twice, and hopefully you will think very favorably about the amendment I will be offering later on.

We can only rely on the States to monitor rates. State insurance commissioners traditionally do that. That has been carved out under Federal law as a regulation of insurance reserved to the States. State insurance commissioners in fact, however, do not have the data nor do they have the experience of the data with which to be able to judge these rates. On the contrary, in some States they do not regulate the rates of commercial policies at all. In other States, such as my State of Florida, the State of Florida Department of Insurance sets a range of the commercial policies' rates, as to what they may be, without the approval of the Department of Insurance.

The PRESIDING OFFICER (Mr. JOHNSON). The time of the Senator has expired.

Mr. NELSON of Florida. I will conclude my opening remarks. I look forward to the debate. I thank the Senator from Connecticut for bringing this important legislation to the floor. I thank the Senate for this opportunity to be heard on a most important issue, important not only to the businesses of this country but to the consumers of this country as well.

Mrs. CARNAHAN. Mr. President, I strongly support the Terrorism Risk Insurance Act.

The September 11 tragedy has affected our Nation in innumerable ways. One of the economic impacts has been that the availability and affordability of terrorism insurance has been severely limited.

Uncertainty in the market is freezing commercial lending, preventing real estate transactions from going forward, and slowing various construction projects. Therefore I believe that we should move quickly to enact a federal terrorism insurance backstop.

I have heard from businesses throughout Missouri—from various sectors of our economy—that are being adversely impacted by current market conditions. But the lack of terrorism insurance is hurting working families as well.

As President Bush pointed out, "If people can't get terrorism insurance on a construction project, they're not going to build a project, and if they're not going to build a project, then someone's not working."

This legislation will promote investment and provide the certainty necessary to reinvigorate commercial lending activities.

I have supported each of the unanimous consent requests that have been offered since December to bring a terrorism insurance bill before the Senate.

I am pleased that we have finally been able to take up this bill. This meaningful Federal backstop is long overdue, and I hope that we can enact it expeditiously.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. I see my friend from Kentucky. I will take a few minutes to

make an opening statement. I see he is here. I do not want to delay him any longer. I will truncate my remarks and then my anticipation is we will turn to the Senator from Kentucky to offer an amendment to get the process going.

Let me take a few minutes, if I may. We have now heard from a number of my colleagues. I appreciate the comments of my colleagues, particularly those of Senators SARBANES, CORZINE, and SCHUMER.

I ask unanimous consent the junior Senator from New York, Mrs. CLINTON, be added as a cosponsor of this bill as well.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DODD. I thank the leadership for their efforts on this bill. This is a complicated area of law. This is a thankless task. When you get involved in something such as terrorism insurance, there are other matters that may attract and galvanize the attention of the American public, but this is a subject matter that can glaze over the eyes of even the most determined listener, when you get into the arcane world of insurance, particularly of terrorism insurance, the reinsurance industry dealing with commercial loans and lending practices, and how it affects the market at large.

I beg the indulgence of our colleagues when we go through this, to understand what we have tried to do here in as much as a bipartisan fashion as possible, with the advice and consultation of organizations, from the AFL/CIO to major banks and lending institutions, insurance companies, the Department of the Treasury, and others in crafting something that will get us out of this particular situation.

Let me just preface my remarks by saying this is a problem. I know there may be some who will argue this is not an issue. It is a massive issue and a growing one. I wish it were otherwise. I wish this were not the case. But the data that is coming in indicates that we have a major blockage, if you will, in the normal flow of commerce, and that is the inability to acquire terrorism insurance, which has a very negative impact when it comes to lending institutions putting their resources on the table, where the exposure could be significant.

Just to put it in some perspective for people, the calculation of the casualty and property loss—I am obviously not going to talk about the loss that goes beyond that we can put a dollar sign on. But for the loss to which you can put a dollar sign in the property and casualty area on September 11, the estimates run no less than \$50 billion, just in property and casualty.

If you start adding others, obviously the numbers go up. To give you some idea, if you had a September 11-like event somewhere in the United States and an accumulation of events like September 11, the availability of resources today to pay the property and casualty losses is about 20 percent of

that number. That is the situation we are in.

You can understand, while people may wish that it somehow were done by just the Federal Government writing a check and the people providing this kind of coverage, that in a free market you have to encourage or induce people to stay involved. There is no requirement under law that they provide this kind of coverage.

The idea of how we can keep commerce moving, and major construction programs underway—by the way, based on the accumulated evidence we have, most every State can demonstrate some serious problem they have in a major commercial or real estate development.

This morning's newspaper headlines in the Washington Post that my colleague from Florida has raised, I think, point out the problem we are facing. I will talk about properties in the District of Columbia. Obviously, the attack on the Pentagon on September 11, and the news the other day about so-called "dirty" bombs that might have been used—and I gather this was somewhat shaky information, but put that aside for a second—the Nation's Capital certainly is a target of opportunity.

We see rates already going up for properties located in the District of Columbia. That is the subject matter of the Washington Post article this morning. In fact, the Washington Post itself is having a difficult time getting coverage for workman's compensation, and the National Geographic building has a similar problem, and there are similar problems around the city.

I will not go into all of the details in the article, suffice it to say that this is a significant story and my colleagues ought to take a look at it. It highlights some of the difficulties we are facing.

This is not a perfect piece of legislation. Obviously, many of us might have written this somewhat differently than proposed. But, obviously, in a body like this with 100 Members, with a lot of different ideas and thoughts, you try to come together with what you can to make some sense and move the product forward.

There are differences of opinion on the substance of this legislation. We are going to hear some of them raised with the amendments that will be brought up and debated. My hope is that the substance of this legislation will prevail.

The provisions that deal with the creation of a temporary Federal backstop for terrorism insurance represent a very hardcore compromise negotiated with Senator GRAMM of Texas, Senator SARBANES, Senator SCHUMER, myself, Senator ENZI, as well as the State insurance regulators, White House, and the Treasury Department. This is a modified version of what we agreed to last fall. Senator GRAMM is not a sponsor of the bill which I introduced for the reason I am sure he will explain himself when he comes to the floor.

There is a lot in this bill that is very similar to what we worked out last fall, but it would not move along at that time for reasons I will not bother to go into again.

Who is supporting what we are trying to do?

I am troubled by our delay in enacting this legislation because of the tremendous demand that we act and act precipitously. There is a bipartisan letter from 18 Governors from across the country representing every region of the country, which I ask unanimous consent to be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

APRIL 15, 2002.

Hon. TOM DASCHLE,
Senate Majority Leader, Capitol Building,
Washington, DC.

Hon. TRENT LOTT,
Senate Republican Leader, Capitol Building,
Washington, DC.

Hon. DENNIS HASTERT,
Speaker of the House of Representatives, Capitol
Building, Washington, DC.

Hon. RICHARD GEPHARDT,
House Democrat Leader, Capitol Building,
Washington, DC.

DEAR CONGRESSIONAL LEADERS: As a result of the events of September 11th, the nation's property and casualty insurance companies have or will pay out losses that will exceed \$35 billion dollars. Since the first of January, many insurance companies, self-insurers and states have been faced with a situation where they are unable to spread the risk that they insure because of the unavailability of reinsurance protection. In the event of another major attack, some companies or perhaps a segment of the industry would face insolvency. While most states have approved a limited exclusion for terrorism with a \$25 million deductible, exclusions for workers' compensation coverage are not permitted by statute in any state. The present situation poses a grave risk to the solvency of the insurance industry, state insurance facilities, economic development initiatives, and the ability of our states to recover from impacts of the September 11th attacks.

In the months after the attack on our nation, legislation passed in the House and was introduced in the Senate to create a backstop for the Insurance industry so they could continue to provide protection to their customers. The Administration has also supported this concept. Currently, there is broad bi-partisan agreement for providing an Insurance backstop. Governors believe this is an important goal that should be inhibited by other issues.

Since late December, the lack of a financial backstop has started to ripple through the economy and will continue to do so. This will further impact the ability of the economy to recover from the current recession.

As Governors, we are facing many critical issues resulting from the September 11th crisis. The emerging problem in insurance coverage only serves to exacerbate our recovery efforts. In view of this, we, the undersigned Governors, respectfully urge the Congress to quickly complete its work on the terrorism reinsurance legislation in order to return stability to U.S. insurance markets.

Sincerely,

Jim Hodges, Governor, South Carolina;
Mike Johanns, Governor, Nebraska;
Paul E. Patton, Governor, Kentucky;
Judy Martz, Governor, Montana; Don
Siegelman, Governor, Alabama; Bob
Holden, Governor, Missouri; Mark R.

Warner, Governor, Virginia; John G. Rowland, Governor, Connecticut; Angus S. King, Jr., Governor, Maine; Mike Huckabee, Governor, Arkansas; Jim Geringer, Governor, Wyoming; George H. Ryan, Governor, Illinois; Bill Owens, Governor, Colorado; Scott McCallum, Governor, Wisconsin; Jeb Bush, Governor, Florida; Frank O'Bannon, Governor, Indiana; Jane Swift, Governor, Massachusetts; Bob Taft, Governor, Ohio.

Mr. DODD. Mr. President, they lay out their concerns about what is going on in their own States.

We have letters from 30 of our Senate colleagues representing a broad array of the political spectrum. I ask unanimous consent that those letters be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

UNITED STATES SENATE,
Washington, DC, April 22, 2002.

Hon. TOM DASCHLE,
Majority Leader, Senate.
Hon. TRENT LOTT,
Minority Leader, Senate.

DEAR MAJORITY LEADER DASCHLE AND MINORITY LEADER LOTT: We are writing to urge prompt Senate passage of short-term, terrorism insurance backstop legislation that would stabilize the insurance market for policyholders and provide financial security in the event of future terrorist acts. As you both know, members of this body quickly responded with a legislative package in the wake of September 11 to ensure the continued availability of insurance for terrorist-related acts. The proposal provided a short term, financial backstop so that private markets for terrorism coverage could be established.

While the House passed H.R. 3210, the "Terrorism Risk Protection Act" late last year, the Senate was unable to bring a legislative package to the floor before our adjournment in December. Since that time, we have heard from the financial services industry, the building and construction sectors, the labor community, small businesses, and other impacted parties that there is currently either no insurance against acts of terrorism or inadequate levels of insurance. This problem is having a delirious impact on our economy, including with respect to the financing and construction of new real estate projects. A host of additional parties, including hotels, convention centers, hospitals, local municipalities, and professional sports teams are also pressing for needed action. Particularly troubling is the evidence that insurers cannot provide needed workers compensation coverage where there are large aggregations of individuals. As you know, these claims are bolstered by a recently released study by the General Accounting Office and by testimony provided recently to the House Financial Services Subcommittee on Oversight.

The Senate should be proud of its work following the tragic events of September 11. We passed numerous pieces of legislation to address the security of our country and the viability of key sectors of our economy. We should also try to prevent severe economic dislocation and should certainly not fall short in helping to ensure that employers and their workers have adequate levels of insurance in the event of additional terrorist acts.

We urge you to bring a terrorism insurance bill to the Senate floor expeditiously.

Sincerely,

Judd Gregg; Jim Bunning; John Breaux;
E. Benjamin Nelson; Dick Lugar; Jesse

Helms; Wayne Allard; Mike DeWine; Susan Collins; Mike Enzi; Jack Reed; George V. Voinovich; Debbie Stabenow; Mary L. Landrieu; Zell Miller; Max Cleland; Dianne Feinstein; Lincoln Chafee; Chuck Hagel; John Ensign; Olympia Snowe; John F. Kerry; Ted Kennedy; Orrin Hatch; Daniel K. Inouye; Evan Bayh; Joe Lieberman; Jon Corzine.

Mr. DODD. Mr. President, we have had repeated letters from the President, Secretary O'Neill, and others in the administration which certainly point out the difficulty.

I will quote the President's comments during the White House gathering back in April. He said:

If people can't get terrorism insurance on a construction project, they are not going to build the project. If they are not going to build the project, then someone is not working. We in Washington must deal with it, and deal with it in a hurry.

Secretary O'Neill commented:

There is a real and immediate need for Congress to act on terrorism insurance legislation. The terrorist attacks on September 11th have caused many insurance companies to limit or drop terrorists risk coverage from their property and casualty coverage, a move that leaves the majority of American businesses extremely vulnerable. The dynamic, in turn, threatens America's jobs, and will wreak havoc on America's economy.

Just this week, Secretary of Treasury O'Neill, Larry Lindsey, Director of the National Economic Council, Mitch Daniels, Director of the Office of Management and Budget, and R. Glenn Hubbard, Director of the Council of Economic Advisors, wrote Senate leadership outlining again the significance of moving forward with this bill.

The labor unions as well have called for action here—a rare occurrence when you get this kind of symmetry between both labor and management.

I quote from Ed Sullivan, president of the Building Construction Trades Department of the AFL-CIO. He says:

President Bush, like all of us, realize that as long as terrorism is a threat, new job-creating projects are being delayed or canceled because we do not have adequate insurance coverage, or workman's compensation coverage available.

The Union Building Trades:

Our members join in urging the U.S. Senate to pass terrorism risk insurance legislation without delay.

The National Association of Insurance Commissioners from across the country, which is made up of State insurance regulators, which continues to strongly urge the creation of a Federal backstop for terrorism insurance, has to its displeasure begun the process of excluding terrorism insurance from standard casualty property policies.

On behalf of the national insurance regulators, I strongly urge the Senate to quickly pass legislation that will make insurance affordable and available to all American consumers and businesses. Only the Federal Government has sufficient resources at this time to help restore adequate levels of risk measurement and financial certainty to our markets.

Finally, a broad coalition of small and large businesses and consumers of

terrorism insurance have called for Senate action as well. There are some who believe there is no reason for the Federal Government to act. They cite a few press articles which suggest terrorism insurance is available in some areas and wonder why the Congress should step in with legislation such as we are proposing.

Terrorism insurance is available, it is true, in limited areas. However, it is not available in many buildings, powerplants, shopping centers, and transportation systems that are perceived as high risk for terrorism acts—hence, the article this morning in the Washington Post about our Nation's Capital. In those cases where terrorism insurance is available, it is often unaffordable and very limited in its scope and amount of coverage.

There are plenty of examples. Also, again, the Washington Post story this morning is the one that comes to mind immediately. I mentioned the National Geographic headquarters in town dropped its workman's compensation because it received threats to large concentrations of employees and joined with the District of Columbia government's insurer as a last resort.

The Washington Post is trying with inability to secure its own workman's compensation insurance. Workplaces around the Nation's Capital have either been denied coverage or have offered reduced coverage.

Why is this going on? When you have a \$50 billion event, you can understand.

If I could wave a magic wand and say, whether you like it or not, you have to be there, you have to have premiums—the law requires them to collect premiums so they can provide the kind of resources they need to pay out if an event occurs. The law requires it.

The question is how do you know how big an event is going to be. We had a \$50 billion one. That is at least a floor of what we know it costs. That is without including workman's compensation, life insurance and others. Just in property and casualty, that is the number.

If you are going to have the industry be out and the private sector do this, they have to cost it out. I wish it could be for nothing. I wish it wouldn't cost anything at all. That is a mythical world. The reality is that banks don't lend money unless they can have some coverage to protect their exposure. If you are not going to give the coverage to protect the exposure, they don't lend the money.

It is not complicated. If you look at the commercial mortgage-backed security business, which covers all but about \$1 billion of all commercial lending that goes on, already in the first quarter it is down \$7 billion—10 percent. You are already finding a stall going on in that area.

Most of my colleagues understand that it is like residential mortgage-backed securities. Security in the commercial area is where they go out and bundle them together and have a secondary market to cover it. Right now,

10 percent in the first quarter is already down in that area.

I am not making the numbers up to highlight the significance of what we are talking about. George Washington University's downtown campus three blocks west of the White House has cut the school's former \$1 billion property and casualty policy in half, and its premiums have been raised 160 percent, and advise that renewing terrorism coverage would cost 15 times more. That is what we are up against here.

I can rail against it. Obviously, there is no great wisdom here to attack the insurance industry. That is a pretty safe bet out there politically.

But the fact is, when you end up with institutions like George Washington University, the National Geographic, private sector people here in the Nation's Capital, it would be difficult to say we are going to go out and cover this after we had a \$50 billion loss, to just jump back in somehow; and for people to say, by the way, don't raise your premiums to do it, and you better have the resources to pay for it. I do not know where people acquired their math knowledge, but this does not work out, unfortunately.

So what we are trying to do is get this industry back in because we cannot require them to do it. So we have come up with a backstop idea that says: Look, the first \$10 billion of losses you are on the hook for. When it gets beyond that, we are going to work out a system that allows us to help in that kind of cost, for 2 years, by the way, with a sunset provision.

Some would like it longer. I think we could make a good case for it being longer because it is awfully difficult, with some major real estate development going on that has more than a 2-year lifespan. But I am not sure how much this institution will tolerate in terms of time, so it has to be abbreviated to some extent. Then, hopefully, as the market develops, the costing out can be calculated, and we can get the Federal Government out of this altogether.

I know of no one who wants to turn the Secretary of the Treasury into an insurance regulator. I am afraid that is what some of my colleagues are suggesting. That is not what this is about. That is a separate debate. Maybe someday we are going to have a debate around here that says the Federal Government ought to become an insurance company. That is a debate, but I don't think that is the debate we want to have here today.

The debate here today is whether or not we are going to set up a program that is going to cause the flow of commerce to get reignited in areas where we have a significant stall.

Let me stay to my colleagues—and my colleague from Florida raises the issue—our bill does require that there be an accounting here separating out the premiums collected for terrorism insurance from the normal course of business. We do not go as far as my col-

league from Florida would like, but in our bill that we have proposed there is an accounting requirement that says you must at least have a separate accounting for the premiums collected for terrorism insurance.

So there is a long list here of projects that I could talk about that go all across the country that highlight everything from the Golden Gate Bridge to the Dolphin Stadium in Florida that are having problems—the United Jewish Appeal, the Hyatt Corporation, the Steve Wynn's operation in Las Vegas our colleague from Nevada has already talked about, Amtrak, the Cleveland Municipal School District, Baylor University. The list goes on and on and on.

Again, we are not making these stories up. This is the evidence we are receiving from across the country, that there is a problem, and it is a growing one. We probably should have acted earlier, but I don't think it is too late for us to be moving forward.

So that is the background of it. Every perspective homeowner, of course, needs insurance to obtain a mortgage from a bank. Similarly, industry as diverse as commercial real estate, shipping, construction, manufacturing, and retailers require insurance to obtain credit loans and investments necessary for their business operations. Additionally, the creation of new construction projects require business loans. I think most people understand that.

If you ever bought a home, you know you don't get the mortgage unless you have insurance. That is what the law requires. That is just as true in the commercial areas. So if there isn't insurance available, the banks are not going to lend you money to buy a house. Maybe some people can buy a house by just writing out a check. Most Americans need a mortgage. And most Americans understand that the banks want to have some insurance on that property to cover their potential loss. So that is why you have to be able to get that.

That is true in commercial areas as well. If you can't get the insurance, then the banks don't lend you the money to build the projects, and people lose jobs. Those are the dots you connect, and that is what is going on all across the country as one of the effects of 9-11. It is a more complicated subject matter, but it is a serious one that the President, the Secretary of the Treasury, organized labor, and others have highlighted.

Some critics will argue, Why should we do anything to help the insurance industry? Quickly, let me add, this is not about the financial health of the insurance industry at all. It is about the financial well-being of nearly every individual and company in America that requires this industry to be healthy enough to be in business.

If you end up being put out of business because you don't have the resources, your solvency gets wiped out, as it would be today with a 9-11-like

event. As I mentioned earlier, there are only about 20 percent of the resources to cover a similar kind of event that occurred 9 months ago on the 11th of September. So this is not so much about their health and well-being as it is those who rely on this industry for their own health and well-being.

As I said, the industry is paying off losses from the September 11 attacks estimated to be roughly \$50 billion. The industry has made clear that despite this unprecedented loss, it remains very strong and solvent.

The question that many will ask is why we need to help an industry that is financially sound? And I think I have laid that out. The answer is we are not protecting insurance companies, we are protecting policy owners and businesses and workers.

This legislation makes sense because it is based on three principles that must be included in any bill that reaches the President's desk.

First, it makes the American taxpayer the insurer of last resort. We could do what we did in World War II. In World War II, the Federal Government insured everything. We just paid all the claims. I don't need to tell you what could happen if that happened today. But that is a point of view: Just let the Federal Government pick up the claims of this stuff, and don't worry about having a private sector insurance industry being involved at all.

But I don't think most Americans think that is a wise solution necessarily given the potential exposure we have. So I think it makes sense to have the industry be the ones that are going to be on the front lines responsible to do what is best, to calculate the risk, to assess premiums, to pay claims. I don't necessarily believe we want to set up another agency of Government, maybe under homeland security. Now that we are reorganizing Government, maybe someone would like to add a branch to become an insurance company. I don't think so.

Secondly, the legislation should promote competition in the current insurance marketplace. Competition is the best way to ensure that the private marketplace assumes the entire responsibility for insuring against the risk of terrorism without any direct Government role as soon as possible. That is why this bill has the very short lifespan we are talking about. This is not setting up something in perpetuity. It is setting up a very short lifespan.

Right now it is 24 months in the bill. And I think there will be suggestions to extend that, which may have some merit, by the way, I suggest, to those who may be offering them. But it is going to be limited, in any case.

Thirdly, the legislation ensures that all consumers and businesses can continue to purchase affordable coverage for terrorist acts.

Without action, consumers would be unable to get insurance, or insurance that is available would be totally unaffordable for them.

Very simply, and lastly, I will just explain briefly—Senator SARBANES has done this already—but let me just take another minute or so for those who may not have heard his comments to briefly describe how S. 2600 actually works.

It will provide Federal terrorism insurance in the event of another significant terrorist attack. This legislation is designed to maximize private sector involvement and minimize the Federal role. The bill does not create a new Federal insurance regulator; rather, it promotes the authority of existing private sector mechanisms.

The Federal backstop is temporary, lasting only 1 year unless extended for an additional year by the Secretary of the Treasury.

The bill envisions that the private sector alone would respond to small-scale attacks, such as car bombs, arson fires, and the like.

The Government intervention only occurs in insured losses in excess of a specific trigger. The amount each insurance company must pay before the Federal participation begins is determined by a statutory formula based on each company's market share. Larger companies pay more through the resulting individual company retentions.

Individual company retentions are calculated based on each company's market share of \$10 billion in the first year, and \$15 billion in the second year if the program is extended, meaning that large companies would sustain hundreds of millions of dollars in losses before the backstop is triggered.

In addition, once the backstop is triggered, each insurance company remains responsible for 10 to 20 percent of every claim dollar paid.

Lastly, I would say as well, regarding the States, we require that these actions be brought in Federal court, that there be a venue that is closer to where the action may have occurred.

But let me quickly point out, we have tried very strongly to retain the role of the State insurance commissions. There are 40 States right now that allow for rates to go into effect, and then the State commissioners can determine whether or not those rates are excessive or not. And 10 States require that rates be approved before they go into effect. That is in commercial property.

In this bill, we say the rates could go into effect, but we do not deny, as exists in 40 States, the State insurance commissioners to then rule on those rate increases. So we are not setting a Federal regulator in that regard. We are still keeping that in the States, and the State insurance commissioners do not lose that power.

The State insurance commissioners have the responsibility, obviously, to keep an eye on the rates, but they also have an obligation to see that the insurers are solvent so they can pay claims, if, God forbid, some event occurs. So the responsibility is dual, both to the insurer to make sure they have

the assets and, of course, to the policyholder to make sure their rates are not too high and coverage will be there, if needed. We make it very clear in this bill that we want to keep the role of the State insurance commissioner viable.

We don't want to get in the business of setting up some massive new government program with a new regulator with a whole bunch of new rules established at the Federal level to start regulating this industry. That is a debate that will occur to some degree down the road, but today is not the day. This is not the place or time for that debate. This is an emergency. It should have been dealt with a long time ago.

My hope is that my colleagues will offer their amendments, we will get through this, and vote it up or down. Maybe our colleagues will decide this bill is not necessary; they don't want to be a part of it. Then we ought to say so. Then end the debate entirely and go about our business. I suspect that a majority of our colleagues think this has value and is important. My hope is we can get it done sooner rather than later.

I turn to my colleague from Kentucky who, I know, has a very important amendment. We will try to deal with that and move the process along.

THE PRESIDING OFFICER. The Senator from Kentucky.

AMENDMENT NO. 3836

Mr. MCCONNELL. I thank my friend from Connecticut. I certainly agree with him that this is legislation we should have passed quite some time ago. The principle sticking point with which I am concerned is the liability issue.

Under the underlying bill, punitive damages are available against victims of terrorism. Let me repeat that. Having just been attacked by the terrorists, the victims of that terrorist act are subject to punitive damages under the underlying bill.

The only concession that those advocates of this kind of litigation have made is to take the taxpayers off the hook for punitive damages. But the way the thresholds are allocated under the balance of the bill, it is highly likely that the taxpayers will be liable under any attack, and all other kinds of damages other than punitive damages will be available against the taxpayer.

We are talking about a bill that while certainly in concept is desirable, it has a number of significant flaws, one of which I would like to begin to try to fix this morning by laying down the amendment I will lay down shortly.

While many of my colleagues on the other side of the aisle have been talking about the need for a terrorism insurance bill, my Republican colleagues and I have been busily preparing for action. Two weeks ago, Senator GRAMM and I broke a month-long logjam by informally offering a proposal for a base text that establishes a responsible program for Federal assistance and

assures that we don't punish the victims of terrorism for the criminal acts of the terrorists.

For months now, the Senate has been locked in a debate about whether an American victim of a terrorist attack, whether it is Walt Disney World, the Mall of America, Giants Stadium, or the Las Vegas MGM Grand, should be held liable for punitive damages.

Remember, punitive damages are intended to punish bad actors. That is what punitive damages are about. In all other ways, defendants are compensated. Punitive damages are designed to punish the defendant. They are not designed to compensate victims.

Nothing in the Republican proposal for a base bill has sought to limit damages to compensate victims. There are no efforts on our part in the Senate to limit damages to compensate victims. What we are talking about is punitive damages which are designed to punish defendants.

We are talking solely about whether American victims of a terrorist attack should be punished not once but twice, attacked first by the terrorists, attacked second by the lawyers.

In pondering this question our colleagues who disagree and their allies have raised an interesting point—that there are some victims of terrorism whose conduct may be so flagrant, indeed so criminal, that as a matter of public policy, we should not let it go unpunished. So to address that concern head on, Senator GRAMM and I offered a new compromise for a base bill that I fully expected my Democratic colleagues would embrace, at least I had hoped they would. Our proposal would permit punitive damages against any defendant who has been convicted of a crime in State or Federal court. Using our criminal justice system to determine what conduct is worthy of punishment is a simple, commonsense solution to ensure that no criminals avoid punitive damages in civil cases.

Let me state that again: In an ideal world, we would not have any punitive damages available against a victim of a terrorist attack. But to help address the concerns of those on the other side that punitive damages might lie in some extraordinary circumstance, the amendment I am about to offer provides a punitive damage opportunity against victims of terrorism who themselves have been convicted of a criminal act. That makes sense because if you have been convicted of a criminal act, punitive damages ought to lie because of the nature of the conduct.

Although Senator GRAMM and I informally offered this proposal before the Memorial Day recess, we did not formally offer it on the floor because we wanted to give the other side plenty of time to consider this approach as a compromise for a base bill.

Actually our proposal was the second compromise supported by many on this side of the aisle. The first compromise from the House-passed bill included a

stripped down liability section agreed upon by Senators GRAMM, SARBANES, DODD, and ENZI. But that compromise was later undone in December by others on the other side of the aisle.

After months of inaction, Senator GRAMM and I came back to propose this second compromise in the hopes that our colleagues on the other side would agree to these protections.

Sadly, the opposite appears to have taken place. Our colleagues on the other side rejected our idea by proceeding to a bill that would allow American victims of a terrorist attack to be held liable for punitive damages. Under this underlying bill, American victims of a terrorist attack could be held liable for punitive damages.

This approach to punitive damages does not compensate plaintiffs, does not prevent the double punishment of American companies who are victims of a terrorist attack, and does nothing to prevent insurance money intended to rebuild homes and reopen American business from being diverted to pay lottery-sized litigation awards.

The message this sends to the American people is that some of our colleagues are not truly concerned with guarding against criminal conduct. Instead, they appear more concerned with guarding the rights of personal injury lawyers to seek punitive damages against American victims of terrorism, protecting the opportunity for American lawyers to seek punitive damages against American victims of terrorism.

On Saturday, the New York Times, certainly a publication I am not frequently allied with on any matter, asked Senate Democrats to move toward our liability proposal. This is the New York Times talking:

Senate Democratic leaders eager to pass their own bill must compromise, even if it means offending trial lawyer groups.

This is the New York Times.

Senate Republicans appear willing to accept far more modest curbs on terrorism-related litigation than their House brethren. Their proposals provide the basis for an eventual reconciliation of House and Senate efforts.

This is in the New York Times, the liberal New York Times, in an editorial entitled "Insuring Against Terrorism," June 8, 2002, just a few days ago.

The home office of the New York Times, of course, is in New York City where this problem is the most apparent. They would like to see some action, and they think having some reasonable limits on punitive damages makes sense in the context of moving this legislation along.

On Monday, four top administration officials, including Treasury Secretary O'Neill, National Economic Council Director Larry Lindsey, Office of Management and Budget Director Mitch Daniels, Council of Economic Advisors Director Glenn Hubbard, announced they would recommend that the President veto legislation that "leaves the American economy and victims of terrorist acts subject to predatory law-

suits and punitive damages." They sent a letter to Senator LOTT, dated June 10. Let me say it again. All four of these top officials in the Bush administration say they would recommend the President veto legislation that "leaves the American economy and victims of terrorist acts subject to predatory lawsuits and punitive damages."

That gives us some parameters or outlines here if we are serious about making a law and not simply playing legislative games. We ought to pass a bill that has a chance of being signed. I think it is pretty clear that the President's top advisers in this area would recommend that he veto legislation similar to the underlying bill. So we have an opportunity, if we are serious about this legislation, to fix it up and get rid of this outrageous punitive damage provision that subjects victims of terrorism to these awards, unless they themselves have engaged in criminal conduct, in which case I must say I think they deserve punitive damages in that unlikely eventuality.

Interestingly, for those who say liability protections are not an important part of terrorism insurance, let me share with you a quote from a recent report by the Joint Economic Committee:

Liability costs are estimated to constitute the largest single cost of the 9-11 attacks and could easily exceed the property damage, life insurance, and workers compensation payments combined.

That is from the "Economic Perspectives on Terrorism Insurance," prepared by the Joint Economic Committee in May of this year.

With this backdrop, I send the amendment to the desk on behalf of myself, Senator GRAMM, and Senator LOTT.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kentucky [Mr. McCONNELL], for himself, Mr. GRAMM, and Mr. LOTT, proposes an amendment numbered 3836.

Mr. McCONNELL. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To provide for procedures for civil actions, and for other purposes)

On page 29, strike line 1 and all that follows through page 30, line 17, and insert the following:

SEC. 10. PROCEDURES FOR CIVIL ACTIONS.

(a) FEDERAL CAUSE OF ACTION.—

(1) IN GENERAL.—There shall exist a Federal cause of action for claims arising out of or resulting from an act of terrorism, which shall be the exclusive cause of action and remedy for such claims, except as provided in subsection (f).

(2) PREEMPTION OF STATE ACTIONS.—All State causes of action of any kind for claims arising out of or resulting from an act of terrorism that are otherwise available under State law, are hereby preempted, except as provided in subsection (f).

(b) GOVERNING LAW.—The substantive law for decision in an action described in sub-

section (a)(1) shall be derived from the law, including applicable choice of law principles, of the State in which the act of terrorism giving rise to the action occurred, except to the extent that—

(1) the law, including choice of law principles, of another State is determined to be applicable to the action by the district court hearing the action; or

(2) otherwise applicable State law (including that determined under paragraph (1), is inconsistent with or otherwise preempted by Federal law.

(c) FEDERAL JURISDICTION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, not later than 90 days after the date of the occurrence of an act of terrorism, the Judicial Panel on Multidistrict Litigation shall assign a single Federal district court to conduct pretrial and trial proceedings in all pending and future civil actions for claims arising out of or resulting from that act of terrorism.

(2) SELECTION CRITERIA.—The Judicial Panel on Multidistrict Litigation shall select and assign the district court under paragraph (1) based on the convenience of the parties and the just and efficient conduct of the proceedings.

(3) JURISDICTION.—The district court assigned by the Judicial Panel on Multidistrict Litigation shall have original and exclusive jurisdiction over all actions under paragraph (1). For purposes of personal jurisdiction, the district court assigned by the Judicial Panel on Multidistrict Litigation shall be deemed to sit in all judicial districts in the United States.

(4) TRANSFER OF CASES FILED IN OTHER FEDERAL COURTS.—Any civil action for claims arising out of or resulting from an act of terrorism that is filed in a Federal district court other than the Federal district court assigned by the Judicial Panel on Multidistrict Litigation under paragraph (1) shall be transferred to the Federal district court so assigned.

(5) REMOVAL OF CASES FILED IN STATE COURTS.—Any civil action for claims arising out of or resulting from an act of terrorism that is filed in a State court shall be removable to the Federal district court assigned by the Judicial Panel on Multidistrict Litigation under paragraph (1).

(d) APPROVAL OF SETTLEMENTS.—Any settlement between the parties of a civil action described in this section for claims arising out of or resulting from an act of terrorism shall be subject to prior approval by the Secretary after consultation by the Secretary with the Attorney General.

(e) LIMITATION ON DAMAGES.—

(1) IN GENERAL.—Punitive or exemplary damages shall not be available for any losses in any action described in subsection (a)(1), including any settlement described in subsection (d), except where—

(A) punitive or exemplary damages are permitted by applicable State law; and

(B) the harm to the plaintiff was caused by a criminal act or course of conduct for which the defendant was convicted under Federal or State criminal law, including a conviction based on a guilty plea or plea of nolo contendere.

(2) PROTECTION OF TAXPAYER FUNDS.—Any amounts awarded in, or granted in settlement of, an action described in subsection (a)(1) that are attributable to punitive or exemplary damages allowable under paragraph (1) of this subsection shall not count as insured losses for purposes of this Act.

(f) CLAIMS AGAINST TERRORISTS.—Nothing in this section shall in any way be construed to limit the ability of any plaintiff to seek

any form of recovery from any person, government, or other entity that was a participant in, or aider and abettor of, any act of terrorism.

(g) **EFFECTIVE PERIOD.**—This section shall apply only to actions described in subsection (a)(1) arising out of or resulting from acts of terrorism that occur during the effective period of the Program, including any applicable extension period.

Mr. MCCONNELL. Mr. President, this amendment replaces the liability section of the underlying bill with the liability section proposed in the compromise bill sponsored by Senator GRAMM and myself.

The compromise has three principal elements. First, consolidation of all claims in a single Federal district court; second, approval of settlements by the Secretary of the Treasury; third, a ban on punitive damages, unless the defendant has been convicted of a criminal offense that is related to the plaintiff's injury.

The first two provisions should not spark any controversy. The proponents of the underlying bill themselves have agreed to Federal jurisdiction over these claims, and the approval of settlements by the Secretary of the Treasury simply protects the taxpayer dollars that will be exposed to potentially enormous lawsuits under this program. And since the underlying bill now—unlike an earlier version—prudently bans punitive damages against the Federal Treasury, this approval process ensures that a party does not attempt to casually circumvent that ban through a settlement.

So, again, this is a debate about whether we should expose American victims of terrorism to punitive damages—damages that heap additional punishment on American victims, even after the plaintiff has been fully compensated for his or her injuries.

Let me make a very important point to those of my colleagues who are traditionally wary of liability protections. Lawsuits arising out of terrorist attacks will be a wholly different animal. They will not feature the traditional small, sympathetic plaintiffs against the crotchety, arrogant big business that makes for such effective television movies and plaintiffs' lawyers' tales. No, these lawsuits will pit victim against victim—victim against victim—both of whom have been devastated by a coldblooded terrorist attack, and both of whom will be faced with traumatic physical, emotional, and financial recovery.

While it is important to ensure that an injured plaintiff be compensated for his or her injuries—and this amendment does just that—it is absurd, immoral, and it is un-American to impose additional punishment on an American victim of terrorism.

For those who remain concerned about punishing egregious conduct, my amendment does not extend the punitive ban to any defendant who is engaged in criminal conduct. History reminds us that punitive damages have always been about punishing bad ac-

tors, not about compensating victims. Punishment has long been a hallmark of our criminal justice system. Indeed, punitive damages draw their origins from the English common law cases of assault and battery, where the criminal law provided an inadequate remedy. So it only makes sense that we should rely on our criminal justice system to determine whether additional punishment is warranted against American victims of terrorism.

If American defendants have engaged in criminal activity, maybe punitive damages are appropriate in those limited circumstances. But what we cannot and must not do is take the punishment reserved for the terrorists who seek to destroy our buildings, our transportation systems, our fire and rescue personnel, and our way of life and transfer that punishment to American victims of terrorism who bear no relation to the hijackers and suicide bombers, or the terror that they unleash on America.

To be perfectly candid, my amendment does not do enough to protect liability costs from skyrocketing out of control and to protect against runaway lawsuits against terrorist victims. Indeed, this amendment moves along way off the litigation management provisions in the House-passed bill. If I had my own way, I would be offering something a good deal more comprehensive than what I have offered a few moments ago. Indeed, I think it is important for everybody to remember what kind of awards are still possible, even if my amendment is adopted, as I hope it will be. There is no limit to the amount of damages an American plaintiff can receive as compensation for physical or economic loss. Let me say that again. I am not proposing any kind of limitation on the amount of damages an American plaintiff can receive as compensation for physical or economic loss.

No. 2, I am not proposing to limit the amount of damages an American plaintiff can receive as compensation for noneconomic damages—pain and suffering losses. There is no limitation under my amendment on recovery for pain and suffering.

In addition, there is nothing to prevent American defendants and victims of a terrorist attack from having to pay for the pain and suffering caused by terrorists. I could have gone a lot further, but there is no limitation under this amendment on recovery for pain and suffering against the victims of terrorism or the taxpayers of the United States. And there is no limit on the amount of money an attorney can take from the plaintiff's award. I must say, I hated not putting that in.

This is very similar to the Federal Tort Claims Act which has been on the books since the late forties. If you sue the United States under the Federal Tort Claims Act, all the cases are in Federal court. There are no punitive damages, and there is a 25-percent limit on lawyer's fees, which seems to

me is entirely appropriate. A limitation on lawyer's fees puts more money in the hands of the victim.

I know what a sensitive subject that is for many in this body, so that is not in this amendment. I did not even limit the lawyer's fees which would have been a very provictim provision. I did not do that. Yet remarkably, this is not enough for some people. Even after a plaintiff has been fully compensated for all his or her fiscal, economic, and noneconomic damages, the underlying bill demands the right to seek additional punitive damages to punish American property owners, American shopkeepers, and American air carriers who are also victims of terrorism.

Under this amendment, no victim is going to be denied the right to fully recover under every other provision. The only thing that is being denied is to get punished for the second time. First, you have been attacked by the terrorists, and then you are going to be attacked by the lawyers if we do not pass this amendment.

Just yesterday this body voted, regrettably, to impose double taxation on American families afflicted by the death tax—double taxation. You get taxed once during your life, and then you get taxed again when you die. Almost immediately afterwards, our colleagues moved to proceed to a terrorism insurance bill that would impose double punishment. Yesterday they voted in favor of double taxation, and today they are advocating double punishment on American victims of terrorism. First, you get attacked by the terrorist, and then you get attacked by the lawyers for punitive damages.

I hope our colleagues will join me in curing the latter error by supporting this amendment. If not, they should be prepared to explain to the American people why—why—in the aftermath of a terrorist attack it is somehow permissible in this country to punish American victims of terrorism for the harm caused by the terrorists. That is what this amendment is about.

Let me reiterate before relinquishing the floor that all other kinds of damages are available to victims of terrorism, to the plaintiffs—pain and suffering, economic compensation—but the only thing that would be denied would be the opportunity to get punitive damages which are, in effect, damages allowed for criminal-type behavior from the victim of a terrorist attack. I have even modified that to allow punitive damages against a victim of terrorism if that victim has been convicted of a crime. That is the category of behavior which historically has made available punitive damages.

This is a very modest amendment. I would have loved to have gone a lot further. I find it outrageous that it is possible for any lawyer in America in any one of these lawsuits to get more than a fourth. I think the Federal Tort Claims Act would have been a perfect way to limit the lawyer's compensation and provide more assistance for

the victim, but I have not offered that because I know there is substantial reluctance in this body, as we have seen time and time again, to impact the compensation of the plaintiff's bar. So I have not done that in an effort to make this more attractive.

This is a very modest step in the direction of protecting the victims of terrorism from being attacked twice. I hope it is something we can pass overwhelmingly in the Senate whenever we get around to having a vote.

Mr. President, I yield the floor and hope that whenever this is voted upon, it will be adopted overwhelmingly.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, let me talk just a moment about the bill and where we are, and then talk about this amendment. This is the third bill now where we have not written a bill in committee, where we have brought a bill to the floor, basically a partisan bill, for no purpose. I do not think I am saying anything others will not agree with in saying Senator DODD and I have pretty consistently been the two most committed people toward passing a bill. But rather than sitting down and trying to work out the provisions of this bill on a bipartisan basis, we have a bill that has been brought to the floor of the Senate which has never been passed by a committee, much less the committee of jurisdiction. We basically are converting this into a partisan issue which I think makes no sense whatsoever.

Let me give a little bit of history so my colleagues understand how we got to be where we are and what the two overriding issues are. There will be many other issues raised, I am sure, but I want people to know what the two overriding issues are.

Way back last fall, Senator SARBANES, Senator DODD, Senator ENZI, and I met with the Secretary of the Treasury in the wake of 9-11 to try to put together a bipartisan bill. In fact, we agreed to a bill. The Secretary of the Treasury endorsed the bill on behalf of the administration. All four of us had a press conference and announced the bill. That bill worked as follows:

It was a 2-year bill with a possible extension to the third year. The first year there was an industry retention, and I want to define this term because we are going to be hearing it now for an extended debate. There was an industry retention whereby the industry had to pay \$10 billion in the case of a terrorist attack before the Federal Government would begin to pay the bills, the idea being that the insurance companies are selling insurance, they are collecting premiums, and they should have a stake in the process and the Federal Government should come in in those events that are so large and so costly that the insurance industry could not sustain it, and that the market for insurance and reinsurance potentially would not develop with the

risk as large as it might without the Federal backing.

Our bipartisan bill had a retention of \$10 billion the first year, \$10 billion the second year, and if the Secretary of the Treasury concluded that a third year was required, he could extend the bill for a third year with a retention of \$20 billion. Above these retention levels where the private insurance company would pay, the taxpayer pays 90 cents out of every dollar of the claim.

Why did we have an industry retention rather than an individual company retention? We had an industry retention because our purpose is not to get the Government into the insurance business permanently, but to build a bridge to transition from where we are today in the wake of 9-11 to a period when, hopefully, we will do a better job of managing these risks at the national level in terms of our antiterrorist policy and, secondly, over time, we can develop the insurance structure to build the risk that remained into the term structure of insurance rates.

If we do not have an industry retention, the incentive for companies to spread the risk is reduced.

If my risk as the Gramm Insurance Company is only some portion of \$10 billion based on my size in the industry, then once I am above that level of exposure, the Federal Government is picking up 90 percent of the cost.

What we are trying to do is to get insurance companies to syndicate so that no insurance company insures the Empire State Building. They might join 10, 20, or 30 other insurance companies in doing it and, in doing so, spread the risk. We want to develop reinsurance so that these risks can be disseminated.

Having an industry cap or an industry retention, rather than an individual company retention, puts pressure on companies to enter into reinsurance. It provides an incentive and in fact a profitability for reinsurance to emerge. The purpose of the bill is to develop reinsurance and syndication.

Having reached that agreement, we also agreed on a set of provisions related to lawsuits in the wake of terrorist attacks. We agreed that all lawsuits had to be brought in Federal court because this was a Federal program. We agreed that the cases could be consolidated. We agreed to require that the Treasury would have to sign off on any out-of-court settlement in these cases. And we agreed there would be no punitive damages in the case of a terrorist attack. This was a compromise.

Treasury wanted a lot more in the way of protection. The House had passed far more comprehensive protections, but this was a compromise we worked out. As we all know, there was an objection to the liability parts of the bill and the bill died.

Then we got into December. In December, in trying to write a bill, we were literally faced with a situation where the bill was going to go into ef-

fect within 3 weeks of the day we were writing it, when we tried to put together a compromise. With 3 weeks before supposedly the vast majority of insurance policies were expiring, we believed there was not time for a reinsurance market to emerge, that there was not time for companies to be able to lay off this risk by syndication. So the proposal was made that we have individual company retention levels.

Might I say that the day we announced a bipartisan compromise with an industry retention level of \$10 billion, virtually every insurance company in America supported that bill.

Mr. LEAHY. Mr. President, will the Senator yield for a question?

Mr. GRAMM. Yes, I would be happy to yield.

Mr. LEAHY. I ask this with some trepidation because I know that every day I hear my good friend from Texas speaking, it is one less day I am going to have the opportunity to hear him. And I mean that sincerely. I really do enjoy his statements. I wonder if he has some idea how much time he needs?

Mr. GRAMM. I think I should be through within, say, 10 minutes.

Mr. LEAHY. I thank the distinguished Senator.

Mr. GRAMM. So the day we introduced the bill with a \$10 billion industry retention, based on the logic that we wanted to encourage reinsurance, that we wanted to encourage syndication, there was broad support in the insurance industry and in American business for that compromise.

We got to December, 3 weeks away from—at least as we are told, and as I believe actually did happen—tremendous numbers of insurance policies expiring on January 1. So recognizing we were writing a bill where the industry would have only 3 weeks to try to respond to it, the bill that was put together had not an industry retention but an individual company retention that would produce a situation where, with as little as \$50 million of cost, the Federal taxpayer could be pulled into the process, a far cry from the \$10 billion retention we had had in the original compromise. The logic of it, as of December 10, was that we were 3 weeks away from the beginning of the year and there was not time for this syndication to occur, there was not time for reinsurance to occur.

Now it is 7 months later. Insurance companies have sold terrorism insurance, not at the price we might have chosen, not to the people we might have chosen they sell it to, but the point is at inflated rates, because things changed, the market changed, and we expected rates would go up. It was, in fact, required that they go up economically. Now insurance companies have sold all these policies based, at that point, on no Government backstop. To come back in now with an individual company retention that could put the taxpayer at risk, when the costs are as small as \$50 million or \$100 million, makes absolutely no sense.

What has happened, as we might expect it to happen, is that if I were running an insurance company and I had a choice between having Government backup begin at \$100 million versus \$10 billion, I would not be running an insurance company long if I did not decide that \$100 million was better than \$10 billion. So now we are having this debate driven by insurance companies that want the low retentions.

In December, when we were writing a bill to go into effect in 3 weeks, there was not any other choice, but once that marker got out there and people saw it as a possibility, then they decided this deal they were willing to sign on in October, which protected the taxpayer by having insurance companies pay the first \$10 billion, that that was no longer acceptable. Seven months later, premiums collected, risks taken to come in with an individual company retention level at the level that is being discussed now in this bill, would grant a huge windfall. I think it is not justified and not good public policy, and that is an issue that has to be dealt with. We have to decide, are we representing the taxpayer or are we representing some other interest? It seems to me to put the taxpayer at risk, to back up policies that have already been sold, with no Government backup, where premiums have already been collected on the basis that there would be no Government backup, to now come up with a backup that is in the tens of millions rather than \$10 billion, is to basically have the taxpayer enter into a situation where the initial risk is borne largely by the taxpayer and not by the insurance company.

Let me say to my colleagues that if this were World War II instead of a new kind of war, we could have had a Government insurance program. We had one in World War II. We had two kinds. We had one for international shipping and we had one for domestic assets. Both companies made money. Both companies, when we signed the peace treaty on the *Missouri*, faded out. The problem now is this war will not end with a peace treaty on the *Missouri*. It will end with the scream of some terrorist. But there will not be a signed agreement that it is over, nor will we know that is the last terrorist in the world.

We have to decide if this is a transition bill that is trying to build these risks into the structure of insurance rates, or are we getting the Government permanently in the insurance business in America. That is a fundamental question. When we decided in October, we answered the question. When this bill was written in December, we were forced into this low deduction by having only 3 weeks. Seven months later, that makes no sense.

This is the issue that needs to be dealt with. I hope it can be compromised on a bipartisan basis. As I said earlier, from the beginning I have believed we needed a terrorism insurance bill.

Finally, I turn to the liability question, and I will be brief. We have before the Senate the most modest proposal related to punitive damages that has been discussed thus far in this bill. We had a bipartisan agreement that banned punitive damages outright, a complete ban. The House adopted a bill that had extensive protections from predatory lawsuits in a terrorist attack. In my mind, to unleash predatory lawsuits after a terrorist attack is like piracy on a hospital ship. It is outrageous and unacceptable.

Now, the Senator from Kentucky has given a very watered down compromise and, I think, a reasonable one, and to me acceptable—though I like the House provisions better; I like the proposal of the President better. What his compromise says is that you cannot sue victims of terrorism for punitive damages. You can sue the terrorists, but you cannot sue the victims, the people who were in the attack, the people whose buildings and lives were destroyed, unless they have been convicted of a felony related to the attack. In other words, they had some measure of criminal culpability.

I don't know how anyone can be against this proposal. If you are against this proposal, you are basically willing to unleash predatory lawsuits on anyone—in this case, including victims of terrorism.

Let me conclude and yield the floor by urging my colleagues to vote for the McConnell amendment. The President has said in a letter, through four spokesmen, including the Secretary of the Treasury, that he will not sign a bill that does not protect people from predatory lawsuits that arise from a terrorist act. I hope my colleagues will vote for the McConnell amendment.

Second, I hope we can work out a compromise on this retention issue. We should be able to work out a compromise. I commend to my colleagues that we do it. If we do it, we can immediately transform this bill into a bipartisan bill. We can get an overwhelming vote for it. We could end the debate on it. If not today, certainly early next week.

There is work that has yet to be done. I hope we can do it together. There is no reason we cannot.

I yield the floor.

The PRESIDING OFFICER (Mrs. CLINTON). The Senator from Pennsylvania.

Mr. SANTORUM. Madam President, I will not be long. I rise in support of the McConnell amendment. I pick up on where the Senator from Texas left off: This should be a bipartisan bill. There is no reason why in dealing with such a serious issue as this that we should not be able to work in a bipartisan way with our colleagues in the Senate. That applies also to the House of Representatives and the President.

Everyone realizes this is a piece of legislation that must be done. We are hearing from folks back home in the business and insurance community as

to the impact of not having any kind of terrorism insurance fallback for these coverages, and the Federal Government does have a role to play.

I serve on the Banking Committee, and I have expressed to my ranking member some of my concerns for us being involved at all. However, I am convinced there is some action we need to take in the short run to address this crisis of businesses not being covered by terrorism insurance, projects not moving forward because of the lack of terrorism insurance. Obviously, there is a need to do this.

There are some areas that, frankly, that I do not believe belong in a bill dealing with this issue. The one that I believe is the most egregious is a concept that is remarkable; that is, that victims of terrorism, who have been either physically or financially and certainly emotionally hurt by terrorists, will be liable to be sued.

Senator MCCONNELL takes a very small part of this liability. I have a problem with any victim being sued for anything. Think back to the days we were at war. Can anyone imagine in previous years if someone in America had been killed as a result of World War II, the Germans or the Japanese bombing someplace in America, that people in America would have rushed to the lawyers and then to the courtroom to sue the restaurant they worked in that was hit by the bomb? Can anyone imagine the Senate, in 1941–42, passing a bill saying people who worked in a restaurant in Hawaii when a bomb was dropped, that the waitress who worked in the restaurant could sue the restaurateur whose place was destroyed for damages? On top of that, this bill says not just for any damages but for punitive damages. In other words, damages having to do with any kind of pain, suffering, injury, or loss of wages, but simply to punish the victim.

We will allow people who were injured economically, emotionally, physically, as a result of an act of war—and this terrorist act was an act of war—to be sued under this bill.

Look back in history. I do not know that there is a precedent for allowing this during a time when we are at war. This was an act against America. This is a very bad and dangerous step we are taking in the Senate.

What Senator MCCONNELL is trying to do is a very small piece of the overall structure of this bill that allows, if the McConnell amendment passes, the restaurant owner of the World Trade Center, whose business was destroyed—he may have escaped; maybe he was not there that day; his business was destroyed, his employees were killed, maybe even family members were killed—will now be in court. Under this bill, he will be in court defending himself from lawsuits. After going through what he has gone through, he now has to defend himself from lawsuits. But worse, he has to defend himself from lawsuits that will seek to punish him because he was a victim. Imagine that.

One can make an argument—and I would not agree—he would have to pay compensation for pain and suffering or wages, but now we will say he will be liable to be sued, to be punished, and he was a victim of terrorism.

Victims of terrorism should not be punished. Victims of terrorists should not be punished by the Senate. It should not be permitted. It is an outrage to every victim who suffered on September 11; if every victim who suffered in September 11 owned anything that was destroyed, and had anyone working for them, they are now going to be on the firing line, again. It is not bad enough that they were hurt physically, emotionally, and economically as a result of terrorist acts. We are now going to put them through another act of destruction in the courtroom.

Even if this amendment is agreed to, that is going to occur. All we are saying is, Members of the Senate, don't allow lawyers—who certainly will do so and certainly have done so already with past terrorist acts—come into court and attempt to punish victims. That is over the top. It is over the top. It is not necessary. It is inhumane.

Mr. MCCONNELL. Will the Senator yield for an observation?

Mr. SANTORUM. I am happy to yield to the Senator from Kentucky.

Mr. MCCONNELL. After making this argument a week or so ago, the American Trial Lawyers Association said there could be some circumstances under which the defendant himself engaged in criminal behavior. So I modified this amendment to include, if the victim of terrorism himself were convicted of a crime in connection with that event, then punitive damages would lie because that would warrant punishment.

Mr. SANTORUM. Absolutely.

Mr. MCCONNELL. But there are no other circumstances—I agree with my friend from Pennsylvania—under which punitive damages ought to lie against the victim of terrorism. I thank the Senator for his observations. I think he is right on the mark.

Mr. SANTORUM. I thank the Senator from Kentucky for further clarifying his own amendment. I think it is important to say if someone is, maybe, in complicity with a terrorist or did something with respect to his business that was, as the Senator from Kentucky said, criminal in nature, that would be prosecuted. Then I think it is a reasonable recourse for some sort of civil damages to be awarded.

But to have a blanket provision that says every victim is a potential defendant in a lawsuit, where the lawyer is saying you should be punished because you were a victim in a terrorist act, I find that to be almost something that is so absurd; it is remarkable to me that we are even debating the existence of this provision.

Mr. MCCONNELL. Will the Senator yield for a question?

Mr. SANTORUM. I am happy to yield to the Senator from Kentucky for a question.

Mr. MCCONNELL. Will the Senator agree that if punitive damages were available, they would be sought in every instance?

Mr. SANTORUM. I am a lawyer. I did practice law before I came here, but not as much as many here. But I do know, one of the things that happens when you file lawsuits is, you do not leave anything out. If you have damages available to you, you file for them and you let those who are responsible for making the decision as to what your plaintiff should receive—whether it is the jury or judge—you let them decide what the plaintiff is permitted to receive.

There is no question in my mind. Imagine, that victims of terrorism—

Mr. LEAHY. Will the Senator yield for a question?

Mr. SANTORUM. Let me finish my statement, and then I will be happy to.

There is no question in my mind that there will be hundreds, if not thousands, of lawsuits where victims of terrorism will be sued for punitive damages in order to punish them because they were victims.

I will be happy to yield for a question.

Mr. LEAHY. Madam President, the Senator has the floor and of course can speak as long as he wishes. I do not mean to suggest otherwise.

Mr. SANTORUM. I was just about to finish.

Mr. LEAHY. We had an informal understanding that originally I was going to follow the Senator from Texas. If not, I will pass it on to the Chair. I just wondered how much longer he might be.

Mr. SANTORUM. I was about to finish. I am happy to do so.

I encourage my colleagues, No. 1, as I said before, to see if we can work out some sort of bipartisan agreement. This should not be a partisan bill. This should be a bill on which we work together in the Senate.

No. 2, I encourage, as a good starting point for that bipartisan arrangement, to support this very minimalist amendment, with all due respect to my colleague from Kentucky. It is a minimalist amendment to eliminate the most egregious aspects of lawsuits available to plaintiffs who want to sue victims of terrorism; that they at least should not be punished, pay compensation as a punishment, unless there was some sort of criminal behavior attached to the victim.

I yield.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, I must oppose this amendment by my good friend from Kentucky, Senator MCCONNELL, to add controversial so-called "tort reform" measures to the terrorism insurance bill. This amendment would limit the legal rights of future terrorism victims and their families. That is not fair or just.

I have worked with the distinguished majority leader, Senator DODD, Sen-

ator SARBANES and others to craft a balanced compromise in the substitute amendment on legal procedures for civil actions involving future acts of terrorism.

The underlying Dodd bill protects the rights of future terrorism victims and their families while providing Federal court jurisdiction of civil disputes involving acts of terrorism and excluding punitive damages from Government-backed insurance coverage under the bill. These provisions do not limit the accountability of a private party for its actions in any way.

Further, the underlying Dodd bill fully protects Federal taxpayers from paying for punitive damages awards. Under the Dodd bill only corporate wrongdoers pay punitive damages, not U.S. taxpayers as some have incorrectly claimed on the Senate floor.

But the McConnell amendment would prohibit punitive damages in almost all civil actions covered by the bill. This latest offer excuses wanton, reckless, and even malicious conduct by a corporate wrongdoer. The amendment provides that a corporate wrongdoer must have engaged in criminal conduct and must have already been convicted under State or Federal law before it can held liable for punitive damages.

This is a ridiculously high standard that excuses and immunizes all sorts of bad acts that should be punished and deterred.

The McConnell amendment, for all practical purposes, eliminates punitive damages, which in turn, completely undermines the civil justice system. There is no effective punishment, and consequently no real deterrent, for misconduct. Right now, the threat of punitive damages makes would-be wrongdoers think twice.

Without the threat of punitive damages, callous corporations can decide it is more cost-effective to continue cutting corners despite the risk to American lives. This would let private parties avoid accountability in cases of wanton, willful, reckless or malicious conduct. That is outrageous and irresponsible.

Punitive damages are monetary damages awarded to plaintiffs in civil actions when a defendant's conduct has been found to flagrantly violate a plaintiff's rights. Under this amendment, those plaintiffs will be victims of terrorism and their families.

The standard for awarding punitive damages is set at the State level, but is generally allowed only in cases of wanton, willful, reckless or malicious conduct. These damages are used to deter and punish particularly egregious conduct. Eliminating punitive damages totally undermines the deterrent and punishment function of the tort law.

The threat of punitive damages is a major deterrent to wrongdoing. Eliminating punitive damages would severely undercut this deterrent and permit reckless or malicious defendants to find it more cost effective to continue their callous behavior without the risk of paying punitive damage awards.

For example, this amendment would permit a security firm to be protected from punitive damages if the private firm hired incompetent employees or deliberately failed to check for weapons and a terrorist act resulted. This amendment fails to protect the interests of victims of terrorism and their families.

I helped author the September 11th Victims Compensation Fund to take care of any terrorism victim suffering physical injury or death. As a result, I was open to public interest retroactive liability limits up to insurance coverage for the September 11th attacks, such as limits for the airlines industry to keep them out of bankruptcy and limits for the owners of the World Trade Center to rebuild.

But liability limits for future terrorist attacks are irresponsible because they may restrict the legal rights of victims and their families and discourage private industry from taking appropriate precautions.

Restricting damages against the wrongdoer in civil actions involving personal injury or death, for example, could discourage corporations from taking the necessary precautions to prevent loss of life or limb in a future terrorist attack.

There is no need to enact these special legal protections and take away the rights of victims of terrorism and their families.

At a time when the American people are looking for Congress to take measured actions to protect them from acts of terror, these "tort reform" proposals are unprecedented, inappropriate and irresponsible. At the very moment that the President is calling on all Americans to be especially vigilant, this amendment is calling on all American businesses to avoid their responsibility for vigilance under existing law.

I am disappointed that some may be taking advantage of the situation to push "tort reform" proposals that have been rejected by Congress for years. This smacks of political opportunism.

I cannot support rewriting the tort law of each of the 50 states for the benefit of private industry and at the expense of future terrorist victims and their families. I urge my colleagues to defeat this amendment.

Madam President, the distinguished Presiding Officer has been as involved in getting compensation to victims of terrorism as anybody here.

I raise these points on the floor that we all want to help victims of terror, and we will, but we don't want to give a wish list to anyone.

Medical laboratories specializing in nuclear medicine might know that their security system is broken. They say: Well, you know, it will take a few hundred dollars to fix it, and we are not going to bother. So it stays broken for months. At the same time, even though they might put high-security locks on the room that houses its vault, they don't put security locks on the storage room that houses nuclear materials.

Say during this period when it is operated without a functioning security system a lab discovers various containers of nuclear matter, including dozens of vials containing radioactive iodine, are missing, and it fails to report that fact to local, State, or Federal authorities and doesn't take any action to repair its security system. This is not a far-fetched example.

Let us say that nuclear material is traced back to the laboratory and it is later used to fuel a "dirty" bomb that exposes American cities. Under this amendment, you can't go back and prosecute that corporation. They have no criminal prosecution. You can't go back. Come on. What is going to be the incentive for that corporation that failed to fix their security system and to fix the locks on their doors? It is just another example.

I see the distinguished acting majority leader.

I yield the floor.

Mr. REID. Madam President, I have spoken to my friend, the distinguished senior Senator from Kentucky, Mr. McCONNELL, indicating we will move to table. I have been told that the Republican leader may speak before we do that. That being the case, I certainly don't want to move to table if the Republican leader wishes to speak.

I ask unanimous consent that when the quorum call is called off, I be recognized. I alert everyone that I will move to table. As everyone knows, the Republicans have their policy luncheons on Wednesdays, and we have ours on Thursdays. I would really like to get the vote out of the way before that time, if we could. We are going to go into a quorum call awaiting the Republican leader.

I ask unanimous consent that I be recognized following the calling off of the quorum.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Madam President, I yield the floor.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. LOTT. Madam President, I thank Senator REID for making sure I have this opportunity to express myself before we go to a vote on this important issue.

I do think we need to move this legislation forward. I have met with individuals, insurance companies, the construction industry, hotels, and others. As Senator REID has pointed out, they are concerned about the growing problem in this area in terms of coverage. I

wish we could have moved it earlier. There have been a lot of efforts on both sides to make it happen. We were not successful.

Now we do have it on the floor. Obviously, there are going to be some important amendments that will be offered to change some of the provisions in the legislation. But I think this is one of the most important ones. The liability provisions in this legislation, or lack thereof, is a critical point. I am very much concerned about jurisdiction and venue, where these actions might occur arising out of terrorism. I would be very concerned about the preemption of State causes of action provisions that would be included.

But the most important point is, how would you deal with the punitive damages issue? I have real concerns and problems with punitive damages coming out of the U.S. Treasury as a result of an action involving a terrorist attack. So I hope we can find a way to resolve the problem.

Senator McCONNELL has been very diligent in staying behind this and working to find an appropriate solution. I think he has come up with one, and this is the key part of it. It says that to the extent punitive damages are permitted by applicable State law, punitive damages may be recovered against a defendant in a civil action involving an act of terrorism only if "the harm to the plaintiff was caused by a criminal act or course of conduct for which the defendant was convicted under Federal or State criminal law, including a conviction based on a guilty plea or plea of nolo contendere."

This is the right solution. This is a fair solution. It does not set a precedent saying that there can be no punitive damages; it just says it can only occur under these conditions that were outlined where there was a criminal act or course of conduct that led to the situation where a terrorist could make this kind of attack or hit.

The President has made it clear that if we do not deal with this appropriately, he will not sign this legislation. So rather than trying to find a time to deal with it later, or to deal with it in conference, or, in effect, try to call either side's bluff, this is the right solution. It does not set the precedent; it does provide for damages under these certain circumstances where there has been neglect or egregious action that led to the terrorist attack.

So I urge my colleagues to support the McConnell proposal that I have cosponsored, and oppose the motion to table this important issue.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, I move to table and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The question is on agreeing to the motion.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Vermont (Mr. JEFFORDS) is necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), the Senator from Idaho (Mr. CRAPO), and the Senator from Rhode Island (Mr. CHAFEE) are necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote "no."

The PRESIDING OFFICER (Mr. EDWARDS). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 50, nays 46, as follows:

[Rollcall Vote No. 152 Leg.]

YEAS—50

Akaka	Dodd	Lieberman
Baucus	Dorgan	Lincoln
Bayh	Durbin	Mikulski
Biden	Edwards	Miller
Bingaman	Feingold	Murray
Boxer	Feinstein	Nelson (FL)
Breaux	Graham	Nelson (NE)
Byrd	Harkin	Reed
Cantwell	Hollings	Reid
Carnahan	Inouye	Rockefeller
Carper	Johnson	Sarbanes
Cleland	Kennedy	Schumer
Clinton	Kerry	Stabenow
Conrad	Kohl	Torricelli
Corzine	Landrieu	Wellstone
Daschle	Leahy	Wyden
Dayton	Levin	

NAYS—46

Allard	Frist	Roberts
Allen	Gramm	Santorum
Bennett	Grassley	Sessions
Bond	Gregg	Shelby
Brownback	Hagel	Smith (NH)
Bunning	Hatch	Smith (OR)
Burns	Hutchinson	Snowe
Campbell	Hutchinson	Specter
Cochran	Inhofe	Stevens
Collins	Kyl	Thomas
Craig	Lott	Thompson
DeWine	Lugar	Thurmond
Domenici	McCain	Voinovich
Ensign	McConnell	Warner
Enzi	Murkowski	
Fitzgerald	Nickles	

NOT VOTING—4

Chafee	Helms
Crapo	Jeffords

The motion was agreed to.

AMENDMENT NO. 3834

Mr. NELSON of Florida. Mr. President, I send to the desk an amendment. It is my understanding the amendment number is 3834.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Florida [Mr. NELSON] proposes an amendment numbered 3834.

Mr. NELSON of Florida. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To restrict insurance rate increases for terrorism risks)

At the appropriate place, insert the following:

SEC. ____ . INSURANCE RATE INCREASES FOR TERRORISM RISKS.

(a) CALCULATIONS OF TERRORISM INSURANCE PREMIUMS.—

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Secretary shall promulgate regulations establishing parameters for insurance rate increases for terrorism risk.

(2) CONSULTATION.—In developing the regulations under paragraph (1), the Secretary shall consult with the NAIC and appropriate Federal agencies.

(3) MODIFICATIONS.—The Secretary may periodically modify the regulations promulgated under paragraph (1), as necessary to account for changes in the marketplace.

(4) EXCLUSIONS.—Under exceptional circumstances, the Secretary may exclude a participating insurance company from coverage under any of the regulations promulgated under paragraph (1).

(b) SEPARATE ACCOUNT REQUIRED.—If a participating insurance company increases annual premium rates on covered risks under subsection (a), the company—

(1) shall deposit the amount of the increase in premium in a separate, segregated account;

(2) shall identify the portion of the premium insuring against terrorism risk on a separate line item on the policy; and

(3) may not disburse any funds from amounts in that separate, segregated account for any purpose other than the payment of losses from acts of terrorism.

(c) LIMITATION ON RATE INCREASES FOR COVERED RISKS.—

(1) EXISTING POLICIES.—Any rate increase by a participating insurance company on covered risks during any period within the Program may not exceed the amount established by the Secretary under subsection (a).

(2) NEW POLICIES.—Property and casualty insurance policies issued after the date of enactment of this Act shall conform with the regulations issued by the Secretary under subsection (a).

(d) REFUNDS ON EXISTING POLICIES.—Not later than 90 days after the date of enactment of this Act, a participating insurance company shall—

(1) review the premiums charged under property and casualty insurance policies of the company that are in force on the date of enactment of this Act;

(2) calculate the portion of the premium paid by the policy holder that is attributable to terrorism risk during the period in which the company is participating in the Program; and

(3) refund the amount calculated under paragraph (2) to the policy holder, with an explanation of how the refund was calculated.

Mr. DODD. Mr. President, will my colleague yield? I inquire, it is a quarter after 1, so we can give our colleagues an indication of time, how much time would my colleague like?

Mr. NELSON of Florida. About 3 hours.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. Mr. President, while some Members are still in the Chamber, I want them to understand an essential truth that a public which is averse to raising taxes is all the more averse to hiking insurance premiums. Let me repeat that.

We all know that the consuming public is averse to raising taxes, and we are sensitive to that fact, but equally or more sensitive is the issue of passing legislation that hikes insurance premiums, and that is what we are facing.

We have an underlying bill that is trying to solve a problem. The problem

is that terrorism has now become an insurance risk. In large part, this bill takes that risk off individual insurance companies and has the Federal Government assume a large part of that risk, so much so in one computation, it is 80 percent of the risk; in another computation it is 90 percent of the risk.

In the very complicated formula of the bill, it has the responsibility of each insurance company with a de minimis amount that it would pay out in the case of a terrorism incident and, mind you, this is only a terrorism incident which is using conventional explosives. It does not include—because they are exempt from almost all insurance policies—the terrorism risk when the terrorist uses chemical, biological, or nuclear weapons.

As a result, we are talking about a risk, as we learned on September 11, in the totality of the picture of the risk, to the whole country and risk to individuals, businesses, owners of high-rises and large businesses, medium-size businesses and small businesses. We are talking about a risk that, albeit still a substantial risk, it is a risk that in large part is being picked up by the Federal Government.

I do not object to that, and I will restate what I said this morning to my good friend and colleague and the sponsor of this legislation, Senator DODD. If I had objected to that, we would not be on this legislation because I was in the Chamber when the unanimous consent request was propounded last night, and I could have easily entered an objection. I did not, and that is why we are on the bill.

I do not object to the Federal Government picking up a major part of the terrorism risk, albeit only the conventional risk; it is not chemical, nuclear, or biological. What I do vigorously object to is that in the underlying bill of the Senator from Connecticut, there is no process in place that can limit the rate hikes of the insurance companies with regard to the terrorism risk.

Mr. DODD. Will my colleague yield on that point?

Mr. NELSON of Florida. Certainly.

Mr. DODD. I say to my colleague, what we do is leave all the State insurance commissioners—and under the present scheme, and my colleague is a former commissioner and knows this better than I do, there are 40 States that allow for rate increases to go into effect, and then the commissioners can overturn those rate increases. In 10 States, the rates have to be approved before they go into effect.

In this bill we apply the standard used in the 40 States, but the State insurance commissioners do not lose their power to turn down that rate increase. We do not have anyone in the Federal Government doing that, but we leave it at the State level for those rate determinations to be made at the local level. That is what the bill requires.

Mr. NELSON of Florida. I was glad to yield to my colleague, and I hope he

will interject these comments so we can have an honest and fair debate about this issue because the very point that the Senator from Connecticut has made is the flaw of this bill. The 50 insurance commissioners of this country usually do not set the rates on commercial policies, and the ones who do, such as the State of Florida, set a range for rates, but that is with regard to all the conventional types of risk—*theft, dog bite, slip and fall*, and so forth.

The fact is that the 50 insurance commissioners, if they were to do what the Senator from Connecticut says, do not have any actuarial data on which to make a judgment about whether or not a rate hike is actuarially sound for the de minimis terrorism risk that the insurance company is now assuming.

Wait, wait. Let me finish.

Mr. DODD. Will the Senator yield so I may comment further?

Mr. NELSON of Florida. I will not yield. I will finish the answer and then I will yield to the Senator.

My amendment sets a process in place. We have the Secretary of the Treasury. Now why would we go to the Secretary of the Treasury? Because the insurance commissioners of the 50 States determine if rates are actuarially sound on the basis of an experience or on the basis of data coming from an experience, and the fact is that the insurance commissioners of the 50 States do not have that data and experience.

So in the Nelson amendment what we do is put into place a process by which actuarially sound judgments can be made on whether or not the rate hike is just right or whether the rate hike is too high or whether the rate hike is not high enough. You mean it could not be high enough? In fact, that is something we ought to know. We ought to know what is the appropriate hike to cover the insurance risk that is being assumed by the insurance company since most of the terrorism risk is being assumed by the Federal Government.

For example, under the Nelson amendment, the Secretary of the Treasury shall promulgate regulations establishing parameters for insurance rates for terrorism risk. That says "parameters." It does not say he sets the rate. It says he sets the parameters.

Then what does it say? It says the Secretary of the Treasury is going to consult in developing the regulations of setting those parameters. The Secretary shall consult with the National Association of Insurance Commissioners and appropriate Federal agencies. Then we go on to give an escape valve, a safety valve. The Secretary may periodically modify the regulations promulgated, as necessary, to account for the changes in the marketplace.

What do we give further on a safety valve? Then we say, under exceptional circumstances the Secretary may exclude a participating insurance company from coverage under any of the

regulations promulgated. So we give all kinds of leeway and exceptions, and yet we set up a process by which we can determine if rates are actuarially sound.

Now, why is this important? It happens to be important because guess who is going to pay? If there is not an actuarially sound rate, guess who is going to pay. The consuming public. You say, oh, no, this is just on tall buildings. So it is going to be the owner of a tall building, a big business. Not so. That is a cost of doing business that is passed on to the consuming public.

So whether it is a football stadium, a shopping mall, a tall building, a short building, wherever it is, a small business, a large business, that cost, that rate hike that so many in the real estate industry have decried because, in fact, they have experienced those rate hikes, as chronicled by this morning's Washington Post, in downtown DC, rate hikes of 160 percent and above since last September, where do we think that is going and who do we think is going to pay it? It is going to be the consuming public.

Because of that is why the Consumer Federation of America has endorsed this legislation. This is dated today. They say it would require the Secretary of the Treasury to set parameters for terrorism insurance rates. This is the Consumer Federation of America. It would require insurers to issue rebates for terrorism insurance premiums already, and I will explain that in a minute. It would require insurers to separately itemize terrorism rates on the insurance bill.

Let's talk about those two provisions. Why would we want to separately itemize terrorism rates on an insurance bill? So the consumer will know how much of their premium they are paying is going to pay for the terrorism risk. It is all a matter of mathematics. It is all a matter of calculations. It is all a matter of what is supposed to be a determination to know if a rate is actuarially sound. If it is, as I hope it will be under the process that we are putting in place in this amendment, then the consumer ought to know how much it is they are paying.

If one has a bank statement and they have an extra charge by the bank, certainly they want the consumer to know how much extra that bank is charging and for what. And so, too, with this. We set up a process which says they shall identify the portion of the premium insuring against the terrorism risk on a separate line item on the policy.

What we do also, as an accounting mechanism, is we cause the insurance company to deposit the amount of the terrorism rate increase in a separate, segregated account so it does not get mixed in with all the other premiums, so we can keep it highlighted, so we know what it is. Then when funds are disbursed to pay if a terrorist strikes and there is an obligation on the part

of the insurance company to pay, then those funds would be distributed from that separate account. The consumer would know how much of their premium they, in fact, are paying.

The other thing the Consumer Federation of America pointed out is that this Nelson amendment would require insurers to issue rebates for terrorism insurance premiums already collected. What do we do there? This is a little complicated, but the essence of it is, if there is a policy in existence and we know that rates have been jacked up already, as has been indicated by this morning's Washington Post story, under the Nelson amendment, if law, the Secretary of the Treasury would say that the rate hike should not be this, which has already been imposed, but instead should be this high. What about the difference over the remaining life of that policy—it may be only a few months left because policies are issued on an annual basis, 1-year policies—that that difference is going to be rebated to the consumer. What does that mean? That means if the insurance company, as so many have already, hiked the rates, as indicated by this morning's newspaper story, up here, but the Secretary of the Treasury comes along and says after evaluating and consulting that the rate hike ought to be here, not here, that for the remainder of the months of that policy the difference is going to have to be rebated to the consumer or to the policyholder, in this case mostly commercial policyholders.

So what we have is a commonsense amendment. It is an amendment that not only will help the big real estate properties that have been putting the pressure on the majority leader to bring this to the floor because they are feeling the heat of all these increased rates. I don't blame them. I sympathize with them.

They need to understand what we are trying to do. Instead of letting it operate in the sphere of the insurance company determining what the rate should be, the real way to regulate what those rates would be is to collect data through the Secretary of the Treasury that determines if the rate is accurate.

This affects the big properties, but it affects little properties as well. This underlying bill applies to commercial property and casualty. Many of these policies are held by small businesses whose insurance premiums have increased exorbitantly, significantly raising the cost of running their business. Commercial policyholders will ultimately pass their premium cost on to consumers in the form of higher prices for products and services. Offering rate protection will allow businesses, large and small, to obtain reasonably priced insurance, eliminating the need to pass their cost on to consumers.

Discussing the question of whether or not insurance companies have hiked rates since September 11, we saw in this morning's paper:

Property insurance for the firm that manages the office building at 1700 Pennsylvania

Avenue will cost twice as much as last year's \$2 million premium.

That is the first paragraph of the story in the newspaper.

The second paragraph:

At George Washington University, insurers have cut the school's former \$1 billion property and casualty policy in half.

They cut the coverage in half, and they raised the premium at the same time 160 percent. That is the second paragraph.

The third paragraph:

The National Geographic has been dropped by its workers' compensation provider because of the perceived threats to large concentrations of employees that are in the D.C. area.

This story, as well as many others, can give example after example of how insurance rates have been hiked, which in large part has caused a number of real estate trade associations to start sounding the alarm that the rates have gone up so much, they need some relief.

What has been said about this in the insurance industry? I am sad to say what has been said is quite revealing. At the end of November, in a statement quoting a Lloyd's of London investor newsletter quoted in the Washington Post, they said, when talking of the effects of September 11 on the insurance industry premiums:

[There is a] historic opportunity [to make profits off of 9/11. Disaster insurance premiums have shot up to a level where very large profits are possible.]

Doesn't that make your blood boil, that there would be people in the boardrooms of insurance companies who are considering the tragedy of September 11 as an excuse to hike insurance premiums big time? Doesn't that make your blood boil?

Another quote from the CEO of Zurich Financial Services from a Reuters story at the end of November as well:

As respects to the terrorist attack of September 11, the industry "needed it to operate efficiently. The players who are strong, in a responsible manner, and are aggressive, will be the winners of the next 15 years." In other words, the industry will profit from the price hikes they are now trying to put in place.

Does that concern Members?

I come to the floor to offer an amendment on a bill that I question the need for but I did not block because I thought it ought to be aired and discussed and voted on. I come to offer an improvement to that bill on its fatal flaw. The fatal flaw is that it does not have a provision to protect consumers from rate hikes and rate gouging.

When dealing with insurance, consumers have to have two provisos: Insurance has to be available, and it has to be affordable. Part of the reason for the bill coming to the floor is that the perception is out there, particularly among large real estate properties, that it is neither available nor affordable. What this amendment tries to do is, in making it available as the underlying bill does, in a huge Federal subsidy—in other words, the Federal Gov-

ernment taking over most of the insurance risk for terrorism risk—we are making it affordable by not letting the hikes go through the roof and all the way to the Moon.

Organizations such as the Consumer Federation of America, which point out they endorse this amendment to protect businesses and consumers from being gouged with unjustifiable rates, have endorsed this legislation.

The underlying legislation I did not block because I thought it ought to come here, but I question whether this is the way we ought to approach it. It is using a sledgehammer in what otherwise ought to be a much more delicate procedure to solve the problem. What is the problem? The problem is, some 8 or 9 months after September 11 certain properties are still having difficulty getting insurance. Where are those properties? They are generally in highly identifiable trophy properties such as tall buildings, such as highly visited facilities like stadiums, such as tourist attractions, such as ports that have cruise traffic. But there is a large part of America that is not like that. Most of America does not have high-rise buildings. Most of America is not highly, densely urbanized. Most of America is not the financial district of the country; namely, Manhattan in New York City. Most of America is not the seat of Government of the United States, Washington DC. Most of America has found its commercial properties to be insured. Why? Because in the last 6, 7, 8 months, the marketplace has responded.

In the last half year, money, capital, investments are flowing into the reinsurance industry. Reinsurance is insurance for insurance companies to insure against catastrophe, such as the terrorism risk.

As a result of there being more supply of this money going into the reinsurance marketplace, the price of reinsurance has started to come down. As a result of the price coming down, because there is more capital available, it has started to ease the price that is being charged to most of America.

So here we are, coming along with an underlying bill that says basically we are going to hold the insurance company on any future conventional weapons terrorism risk only a little bit responsible. Instead, we are going to shift most of that terrorism risk over to the Federal Government of the United States.

For certain properties, I agree there is a legitimate need for the Federal Government to backstop insurance companies. Those are primarily your trophy properties. But because the insurance marketplace has responded over the last half year, we do not need to respond with this kind of legislation, and we surely do not need to respond with this kind of legislation which, in fact, has no ability to limit the rate hikes that will occur.

Thus, I offer my amendment as a means of process.

Let me close by saying this: Let's get it to its bottom line. Let's get it to its political raw. I am afraid if you vote for this without the Nelson amendment, you or any Senator vote for this without the Nelson amendment, a legitimate charge can be made that the Federal Government took over the biggest portion of the insurance terrorism risk without a limitation on the insurance premium hikes.

I do not think any Senator wants to be accused of that. I say again, the American public does not like you to vote for tax increases, but let me tell you there is something they do not like even more. They do not like people to vote on jacking up their insurance rates. You can make this a much better bill by adopting the Nelson amendment, which will put in place a process whereby the Secretary of the Treasury will determine if the rate is actuarially sound or if it is not. The Secretary of Treasury could be determining maybe it is not enough. But, then again, he could be determining that maybe it is way too much.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I thank my colleague from Florida for this amendment. Let me start out speaking for a moment about the underlying legislation. Then I want to speak about the Nelson amendment.

I am glad the Senate is finally acting on the whole question of affordable terrorism insurance. Over the past 6 to 8 months, I have heard from developers, lenders, and retailers in my State who are saying this is getting very expensive. Basically a lot of construction projects have been stalled or have fallen through the cracks. Some of the major landmarks in Minnesota, such as The Mall of America, have had trouble with their lenders. So I want to be honest with my colleagues, to me this is really about jobs. If the insurance is not there or it is too expensive, then the projects do not get built and planned development may not happen; jobs are lost. Therefore, I think the underlying bill is important.

That is why I support the Nelson amendment. What the Nelson amendment says is if the Federal Government is basically going to assume the financial risk of a terrorist act, then we should ensure that the insurance industry is passing on this reduced risk in the form of lower insurance premiums to businesses.

The background of my colleague from Florida is in this very area, and he can speak about this with more expertise, but he is saying we do not want to end up giving private insurance companies a blank check to gouge businesses. That is the real danger.

In other words, if the problem the Senate is trying to address is the skyrocketing costs of terrorism insurance, and we address it by reducing the liability of the insurance industry to acts of terrorism, then we should make

sure the loop is closed and businesses are not charged exorbitant rates for insurance the United States taxpayers are actually providing. I believe that is what the Nelson amendment says. Therefore, I think it is common sense. I think it will make terrorism insurance more available. I think it will prevent the gouging of businesses. I think it will prevent us from giving just a blank check to this insurance industry. That is why I support the amendment.

I think this amendment is good for our businesses. I also think this amendment is in the spirit of the underlying bill. I think it does not in any way, shape, or form—I say to my colleague from Florida—negate or undercut this legislation. I just think it strengthens it. I think it closes a loophole and provides the additional protection we need to have, to make sure that we, the taxpayers, are not underwriting the insurance business which then gouges business. I believe that is what this is about—strong probusiness and strong proconsumer.

If I could just take another minute or two, I ask unanimous consent that I may take 5 minutes to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Minnesota is recognized.

Mr. WELLSTONE. I thank the Chair.

(The remarks of Mr. WELLSTONE pertaining to the introduction of S. 2617 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, let me first say that I believe the Senator from Florida is to some degree correct about his concern. I think his remedy is wrong, and I am not going to support it. But I believe there is a problem. I wish to try to set out what I think the problem is and why I don't think this is the remedy.

The problem is that, beginning in January of this year, huge numbers of insurance policies expired. We tried last year without success to pass a bill. That effort went into mid-December. I am familiar with it because I was involved in it. Insurance companies sold policies beginning in January, and we are in June. Policies have been sold. Rates have gone up, as they had to go up because risks have gone up.

But if we come in now with a bill that has a very low retention, where the taxpayer is going to become the net payer before there is a substantial or mega loss—I remind my colleagues that when we first started debating this no one proposed that we go into business with the insurance companies. No one has proposed—I don't think anybody proposed. Maybe I had better be careful because for every bad idea there is a constituency. But I don't think anybody has proposed that we set up a Government insurance program.

The proposal has been that, once there is a cataclysmic loss, the Federal Government be the backup for insurance companies. The word that has been used throughout the debate is the Federal Government would be the "backup." In October, when we were putting together a bill that had a retention rate of \$10 billion, which meant that private insurers had to lose \$10 billion before we stepped in and started to pay 90 percent of the costs, \$10 billion is a cataclysmic loss.

What happened as the bill evolved in December, and when we were only weeks away from the bill going into effect, that \$10 billion retention got changed to individual company retentions. So the level at which the taxpayer starts paying has gone down and down. Now we find ourselves in a position where various interests that would have been delighted in October to have gotten the \$10 billion retention now oppose it, wanting individual company retentions.

The Senator from Florida is simply pointing out that to come in now where the Federal Government is going to pay out money before there is a mega loss is going to create a situation where people have charged premiums and sold policies based on one set of circumstances.

We are about to change those circumstances. In doing so, you are going to have a net wealth effect. There is no question about it.

I think the solution is to change the bill before us and require a higher level of loss—a higher level of "retention," as it is called in the industry—so we simply move back to insure the kind of loss that no one was able to insure against in any case.

But I wanted to make it clear that there is some validity to the Senator's argument and concern about equity.

Having said that, I am very loathe to getting the Federal Government in the business of setting insurance rates. We have never done it before. It is something that has been done by the States. Those State regulations are still in place.

I know our distinguished colleague from Florida has been a State insurance commissioner, and he understands how difficult it is to set these rates. As difficult as it is for Florida and Texas, it would be more difficult for the Federal Government because we have never done it.

I simply, again, make the point that I made earlier; that is, I think there are two problems with this bill as it exists now. One is we are leaving victims of terrorism unprotected against predatory lawsuits. On a straight party-line vote a minute ago, we decided to do that.

The second problem is that we have a retention level in this bill now that is so low that it doesn't take into account the fact we have had 7 months where insurance has been sold with no Federal backup. Also, the most critical point is that, if we want a reinsurance

market to emerge, if we want to encourage syndication, you don't do that with individual company retention. I am afraid we are creating a hothouse plant here which will never get out of subsidization. We will never get out of this business if we leave the bill the way it is now.

I am not saying that the \$10 billion retention solves every problem in the bill. It doesn't. But at least it forces companies to syndicate, and it forces companies to be willing to purchase reinsurance. That creates the profits to bring it into existence.

I intend to vote against the amendment of the Senator from Florida, but I wanted to make it clear that he has raised an issue that the current bill does not deal with. If this amendment is not successful, I hope we will find a way for dealing with it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I have spoken to the Senator from Florida, the sponsor of this legislation. At approximately 3:15—he thinks that would give everyone enough time to say what they have to say, and we have a presentation to be made by Governor Ridge at 2:15—I alert everyone that we probably will have a vote at about 3:15 this afternoon on this matter.

Mr. NELSON of Florida. Mr. President, will the Senator yield?

Mr. REID. Yes.

Mr. NELSON of Florida. Does that mean we will continue in session even while Governor Ridge is speaking?

Mr. REID. That is right.

Mr. NELSON of Florida. I ask unanimous consent that Senator CLINTON be a cosponsor of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Utah is recognized.

AMENDMENT NO. 3839

Mr. HATCH. Mr. President, on December 5, 2001, the Senate ratified two extremely important international treaties, the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism, both of which further our efforts in the worldwide war on terrorism.

Under the terms of these treaties, which were negotiated under the auspices of the United Nations, the United States and the other countries who are signatories to the treaties, have obligated themselves to prohibit acts of terrorism, or in support of terrorism, within their national borders. The signatories to these treaties are committed to fighting the global war against terrorism.

I rise today to offer an amendment that would implement the terms of these treaties by creating new criminal offenses for terrorists who detonate bombs in public places, and for those individuals who aid terrorists by providing or collecting funds for use in terrorist activities. I had hoped that

there would be no need for such an amendment today. There is bipartisan support for passing implementing legislation.

I commend Senator LEAHY for supporting almost identical legislation that I am presenting and attempting to pass such legislation just last night. The bill was cleared on the Republican side. However, I understand that the Democrats refused to pass it. That is most unfortunate, and I am disappointed in the Senate's failure to act.

This is critical legislation that we must enact promptly. As I have already stated, the Senate already ratified these treaties on December 5, 2001. The House of Representatives acted soon thereafter, on December 19, 2001, to pass a bill, H.R. 3275, which is identical to the amendment I am offering today. There has been overwhelming, bipartisan support for this legislation. H.R. 3275 was passed by a vote of 381-36. For one reason or another, however, the bill has been stalled in the Senate.

I urge my colleagues to give their unanimous support to this amendment. The President of the United States, as well as Treasury Secretary Paul O'Neill, Secretary of State Colin Powell, and Attorney General John Ashcroft, have all voiced support for this implementing legislation. Indeed, we have an obligation under the treaties we ratified to enact this legislation.

Here is what my amendment would do. It would meet our obligations under the two treaties by prohibiting certain acts within our borders. With respect to the Terrorist Bombings Convention, the legislation would prohibit delivering or detonating an explosive or other lethal device in a public place, a transportation system, or a State or government facility. With respect to the Terrorist Financing Convention, the legislation would prohibit providing or collecting funds with the knowledge or intent that such funds be used, in full or in part, to finance an act of terrorism.

Mr. President, it is essential—now more than ever—that the United States maintain its position at the forefront of nations in opposition to terrorism. This legislation fulfills our obligations under the treaties we already have ratified. Identical legislation has already passed the House of Representatives. So I sincerely hope that we will adopt this amendment here today, and on its own, so that we can deliver it to the President to sign and thereby continue to lead the world in the fight against terrorism.

Now, could I ask the Parliamentarian, is it possible for me to offer this amendment as a second-degree amendment to the Nelson amendment?

The PRESIDING OFFICER (Mr. CARPER). The Nelson amendment is subject to a second degree.

Mr. HATCH. Then I will call up the amendment and offer it as a second-degree amendment.

Mr. GRAMM. Why don't you just ask it be set aside and offer yours as a first degree?

Mr. HATCH. Mr. President, instead of doing that, I ask unanimous consent that we set aside the pending amendment, and I will offer this as a first degree.

The PRESIDING OFFICER. Is there objection?

Mr. REID. I object and suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from Utah retains the floor during the unanimous consent request.

The Senator from Utah.

Mr. HATCH. Mr. President, I renew my request to set aside the Nelson amendment, and send an amendment to the desk.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The clerk will report the amendment.

Mr. REID. Will the Senator from Utah yield for a unanimous consent request?

Mr. HATCH. Excuse me?

Mr. REID. Will the Senator from Utah yield for a unanimous consent request?

Mr. HATCH. I am happy to yield for such purpose.

Mr. REID. Mr. President, it is my understanding the Senator from Utah has asked—and everyone has agreed—that the Nelson amendment be set aside, and his amendment would stand separate from that.

Therefore, I ask unanimous consent that at 3:15 today Senator DODD or his designee be recognized to offer a motion regarding the Nelson amendment.

The PRESIDING OFFICER. Is there objection?

Mr. NELSON of Florida. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. I would ask that you amend that unanimous consent request so that I have 5 minutes to close before the vote on my amendment.

Mr. REID. That would be fine that you would have 5 minutes and also that the minority would have 5 minutes. So we would begin that at 5 after 3 p.m.

The PRESIDING OFFICER. Is there objection?

The Chair hears none, and it is so ordered.

The clerk will report the amendment.

The senior assistant bill clerk read as follows:

The Senator from Utah [Mr. HATCH] proposes an amendment numbered 3839.

Mr. HATCH. Mr. President, I ask unanimous consent reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under "Text of Amendments.")

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I rise to speak on S. 2600, the Terrorism Risk

Insurance Act of 2002. Naturally, I supported the amendment of the distinguished Senator from Kentucky, Mr. McCONNELL. I am very disappointed I was unable to speak on the McConnell amendment before the premature motion to table. I think most of us agree that something needs to be done in this area. What we need to agree on is how to resolve the issue in a prudent and responsible manner that provides the appropriate stability to our economy without exposing our taxpayers to an unreasonable financial burden. Let me begin by stressing the importance of this issue. Insurance plays a vital role in this country, not just in helping in the recovery after a tragedy, but in the day to day operation of our national economy. We all know the devastating impact the events of September 11th had on our Nation—the human cost alone. What some do not realize is the economic impact that has resulted and which will continue to have a negative effect on business, the normal flow of commerce, and especially the jobs of everyday Americans if we do not act and if we do not act responsibly. Insurance is necessary to the operation and financing of property and the construction of new property. Without insurance, our economic growth is in jeopardy, businesses will fail, and jobs will be lost. My constituents have come to me on multiple occasions, imploring that the Senate act on this issue. They are genuinely concerned about the negative impact lack of coverage will have on their businesses and on their employees.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter dated June 10, 2000, from the Treasury Department and signed by not only the Secretary of the Treasury but the Director of the Office of Management and Budget, the Director of the National Economic Council and the Director of Economic Advisors—all urging that the Congress act to address this issue, but, most importantly, all noting that it must be addressed in a reasonable and responsible manner.

Mr. President, I ask unanimous consent that letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF THE TREASURY,
Washington, DC, June 10, 2002.

Hon. TRENT LOTT,
Senate Republican Leader,
U.S. Senate, Washington, DC.

DEAR SENATOR LOTT: The War on Terrorism must be fought on many fronts. From an economic perspective, we must minimize the risks and consequences associated with potential acts of terror. No measure is more important to mitigating the economic effects of terrorist events than the passage of terrorism insurance legislation.

Last November 1, the Administration publicly agreed to bipartisan legislation negotiated with Chairman Sarbanes, Chairman Dodd, Senator Gramm and Senator Enzi. While the House of Representatives quickly responded to this urgent need by passing appropriate legislation, the Senate did not act

and has not passed any form of terrorism legislation in the intervening seven months.

The absence of federal legislation is having a palpable and severe effect on our economy and is costing America's workers their jobs. In the first quarter of this year, commercial real estate construction was down 20 percent. The disruption of terrorism coverage makes it more difficult to operate, acquire, or refinance property, leading to diminished bank lending for new construction projects and lower asset values for existing properties. The Bond Market Association has said that more than \$7 billion worth of commercial real estate activity has been suspended or cancelled due to the lack of such insurance. Last week, Moody's Investors Service announced that 14 commercial mortgage-backed transactions could be downgraded due to a lack of such insurance.

Without such insurance, the economic impact of another terrorist attack would be much larger, including major bankruptcies, layoffs and loan defaults. While we are doing everything we can to stop another attack, we should minimize the widespread economic damage to our economy should such an event occur.

One important issue for the availability of terrorism insurance is the risk of unfair or excessive litigation against American companies following an attack. Many for-profit and charitable entities have been unable to obtain affordable and adequate insurance, in part because of the risk that they will be unfairly sued for the acts of international terrorists.

To address this risk at least two important provisions are essential. First, provisions for an exclusive federal cause of action and consolidation of all cases arising out of terrorist attack like those included in the Air Transportation Safety and System Stabilization Act, are necessary to provide for reasonable and expeditious litigation.

Second, the victims of terrorism should not have to pay punitive damages. Punitive damages are designed to punish criminal or near-criminal wrongdoing. Of course such sanctions are appropriate for terrorists. But American companies that are attacked by terrorists should not be subject to predatory lawsuits. The availability of punitive damages in terrorism cases would result in inequitable relief for injured parties, threaten bankruptcies for American companies and a loss of jobs for American workers.

It is also clear that the potential for massive damages imposed on companies that suffer from acts of terror would endanger our economic recovery from a terrorist attack. Indeed, the added risks and legal uncertainty hanging over the economy as a result of last September 11th are major factors inhibiting a business willingness to invest and to create jobs. It makes little economic sense to pass a terrorism insurance bill that leaves our economy exposed to such inappropriate and needless legal uncertainty.

The bipartisan public agreement reached between the Administration and Chairman Sarbanes, Chairman Dodd, Senator Gramm and Senator Enzi last fall provided these minimum safeguards. We would recommend that the President not sign any legislation that leaves the American economy and victims of terrorist acts subject to predatory lawsuits and punitive damages.

The American people and our economy have waited seven months since our public agreement on legislation. The process must move forward. Prompt action by the Senate on this vitally important legislation is needed now.

Sincerely,

PAUL H. O'NEILL,
Secretary of the Treasury.

MITCHELL E. DANIELS,
Director, Office of
Management and
Budget.

LAWRENCE LINDSEY,
Director, National
Economic Council.

R. GLENN HUBBARD,
Director, Council of
Economic Advisors.

Mr. HATCH. My colleagues from Kentucky and Connecticut have already referred to this letter, but I would like to highlight a few of the specific points conveyed in that letter.

Quoting the letter:

In the first quarter of this year, commercial real estate construction was down 20 percent. The disruption of terrorism coverage makes it more difficult to operate, acquire, or refinance property, leading to diminished bank lending for new construction projects and lower asset values for existing properties. The Bond Market Association has said that more than \$7 billion worth of commercial real estate activity has been suspended or cancelled due to the lack of such insurance.

Without such insurance, the economic impact of another terrorist attack would be much larger, including major bankruptcies, layoffs and loan defaults.

This letter really underscores the serious ramifications to our economy that have resulted from a lack of coverage for terrorist acts and supports congressional action in this area. However, it seems to me we ought to do it in a responsible manner. The letter goes on to state:

One important issue for the availability of terrorism insurance is the risk of unfair or excessive litigation against American companies following an attack. Many for-profit and charitable companies have been unable to obtain affordable and adequate insurance, in part because of the risk that they will be unfairly sued for the acts of international terrorists . . . It makes little economic sense to pass a terrorism insurance bill that leaves our economy exposed to such inappropriate and needless legal uncertainty.

In the event of a terrorist attack it is contrary to commonsense to place unlimited exposure on companies—who are themselves victims of that attack—for the criminal acts of third parties, the terrorists. I do not suggest that we should limit the recovery of economic damages of an injured victim if there is culpability on the part of a business. However, we must provide some stability in the litigation process by streamlining a Federal cause of action and not allowing punitive damages unless criminal conduct is proven, as the distinguished Senator so aptly argued in the prior amendment. Punitive damages are designed to punish the defendant, not compensate the victim. I ask my colleagues, is it fair to punish a defendant business for the criminal acts of a third party?

The President may well veto any measure that unreasonably exposes taxpayers and fails to provide stability to our economy. We need to act in this area, but if we fail to do so in a responsible manner, legislation may never be enacted and we will have failed in our responsibility.

My colleague from Kentucky, Senator MCCONNELL, has offered an amendment that I think is both reasonable and necessary to ensure that we address this issue in the proper and most effective manner. His amendment provides for a Federal cause of action and consolidation of multiple actions relating to the same event by the panel on multidistrict litigation. When we are dealing with a catastrophic event, it makes sense to have a process in place that avoids inconsistent judgments in multiple courts which could result in disparate treatment of victims.

This amendment of the distinguished Senator from Kentucky does not ban punitive damages. Let me restate, it does not ban punitive damages. It ensures that punitive damages are not counted as an insured loss covered by the Government backstop, as does S. 2600. Senator MCCONNELL's amendment goes on to provide that punitive damages will be available to a claimant, if State law so provides, but only if criminal conduct by the defendant is proven. This is reasonable and just. Without this limitation, then we are in effect punishing victims of terrorism and lining the pockets of the trial lawyers, not the victims. My colleagues on the other side of the aisle seem to think that if they merely provide that the Government will not cover punitive damages that is all that is necessary. I submit that the provision regarding punitive damages in S. 2600 actually compounds the problem. Insurance companies do not generally cover punitive damages, so those that are really at risk of bearing the brunt of the terrorist attacks are the insured businesses, businesses that provide jobs. Do we really want to undercut the real purpose of enacting Federal terrorism insurance legislation?

Senator MCCONNELL's amendment has another important aspect—settlement approval by the Secretary of the Treasury. If the Government is going to act as a backstop for insurance, then we must ensure that the Government's generosity is not abused. An approval mechanism such as that proposed by Senator MCCONNELL will work to ensure that any settlement of a claim is justified and supportable by the underlying facts and not a rush to the courthouse so that the trial lawyers can cash in and the defendants can reach their, what is in essence a deductible limit, resulting in the Government responsibility kicking in prematurely.

We are seeking to provide stability to our economy, but S. 2600, as currently written, will actually hurt those we are trying to help. If given the opportunity I would have urged my colleagues to support this amendment so that we can provide the necessary stability to our economy in an appropriate manner.

I hope before this debate is over we can return to this issue and resolve it. It is hard for me to support a bill such as this if we don't resolve this type of problem, because we are creating problems, not resolving them. Frankly, it is

about time that we do what is right around here rather than what is politically important to one side or the other.

This is a very important bill. I want to vote for it. I want to support it. I want to see that our businesses are protected. I want the Federal Government to step to the plate. But I want them to do it under the right circumstances with well-written laws that will make a difference in the fight against terrorism but will not destroy companies or businesses or jobs, which is what I think this current bill will do.

I appreciate the leadership of those who are trying to resolve this problem and who have brought this bill to the floor. I want to support them, but we have to start worrying about what works economically, what works legally, what is fair legally, what really should be done. We have to punish the perpetrators and not punish those who are the victims.

In many cases, the bill as written does not solve those problems. I think we should spend a little more time in trying to find some common ground to help resolve these problems.

Good trial lawyers don't need punitive damages. If they are really good, they can still get tremendous judgments and awards against those who are negligent, those who haven't done what is right. But when you allow punitive damages, that can lead to runaway juries and other problems. As an example, States such as Nevada have had so many medical liability cases brought now that they are losing their obstetrician-gynecologists, neurosurgeons, and other surgeons. Physicians are going to other States or they are just getting out of the business. That is starting to happen all over America because we are not approaching these problems in ways that really make sense. On this bill, we ought to approach it in a way that makes sense.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I believe Senator LEAHY from Vermont will talk with the Senator from Utah about his amendment which, except for the word "terrorism," is unrelated to the substance of the underlying bill. I think the effort was to make that a freestanding proposal to deal with implementation of a convention dealing with terrorism. My hope is that the members of the Judiciary Committee will work on this to see if they can't resolve that matter to have it be dealt with as a freestanding proposal rather than as an amendment.

The reason I say that to my friend and colleague from Utah is that if we begin to open up this bill to matters unrelated to the subject matter, we will delay enactment of this bill. It may die here on the floor. If Members are interested in seeing us get something done on terrorism insurance, we need to stick with amendments related to the subject matter.

My friend from Florida has offered an amendment related to the subject matter. I may disagree with him on the amendment, but I appreciate the fact that we are offering language that relates directly to what is before us.

I know Senator LEAHY, the chairman of the Judiciary Committee, is working his way over here to talk with the Senator from Utah. Maybe they can resolve this matter and there can be a way to deal with this rather than having us necessarily get caught up in extensive debate on the implementation of a convention in the midst of the terrorism insurance bill, which is of concern to me, that we would end up off on a tangent and not get the matter before us considered properly.

I see my colleague standing.

Mr. HATCH. Mr. President, I will be happy to work with the distinguished Senator and listen to any suggestions that are made.

I think it is very pertinent to this bill. I would like to work with him. I am open and will be happy to get our two staffs together.

Mr. DODD. I appreciate the comments of the Senator from Utah. I hope my other colleagues on the Judiciary Committee have heard his statement. That seems to leave the door open for some possible resolution of the matter.

Let me address the Nelson amendment. My colleague from Florida has offered an amendment that comes in several parts. I will emphasize to him that the first parts of it deal with basically having the Secretary of the Treasury, as I read it, becoming an insurance regulator, a Federal insurance regulator.

I will hold some hearings, as the chairman of the Securities Subcommittee, with the permission and approval of the chairman of the committee, Senator SARBANES. But we want to hold hearings at some point on the whole issue of a Federal regulator of insurance. That is a very important debate and discussion.

I know the Senator from New York, Mr. SCHUMER, has a significant interest in that subject, as does my colleague from New Jersey. It is a very divided constituency within the insurance constituency as to whether there ought to be a Federal regulator or not. That is going to require a number of hearings as to whether or not we want to make that step and move forward.

I do not have an opinion on that issue one way or the other.

Mr. NELSON of Florida. Will the Senator yield?

Mr. DODD. I am happy to yield.

Mr. NELSON of Florida. Mr. President, the Senator raised a very legitimate question. I think that ought to be hashed out. However, the Senator's bill does self-destruct at the end of year 2002, unless it is extended by the Secretary for 1 more year.

Mr. DODD. That would be 1 year. The bill before us is only a 2-year bill. So it is 1 year and a second year if the Secretary of the Treasury agrees to it.

Mr. NELSON of Florida. That is correct. Therefore, we are not talking about this Senator's amendment having any kind of permanent regulation of rates at the Federal level. Rather, we are looking at a process to affect this specific bill having to do with terrorism rates of which the Federal Government is picking up 80 or 90 percent.

Mr. DODD. Mr. President, I will concede that point because this is a 2-year bill that sunsets. Obviously, we are talking about if all of a sudden the Department of the Treasury—is going to set rates and engage in all of the activities that a normal insurance commissioner would, on a Federal level it is going to require a rather significant step forward.

Let me address this. The one point the Senator from Florida has raised with which I agree—the language is different, but I think the point is the same. In the underlying bill, on page 12, lines 7 through 12, paragraph 2, under conditions for Federal payments:

No payment may be made by the Secretary under subsection (e) unless . . . (2) the participating insurance company provides clear and conspicuous disclosure to the policyholder of the premium charged for insured losses covered by the Program and the Federal share of compensation for insured losses under the program.

In effect, it is separate accounting so that we have a very clear accounting procedure which allows that whatever premiums are collected for terrorism insurance would be accounted for separately from other premiums collected. The language the Senator from Florida has is even more explicit. It requires segregation of the funds and the like. I don't disagree with him on that part of his amendment, that we ought to have separate accounting.

Secondly, in response to some comments made by my colleague from Florida, there are significant reporting requirements. Let me remind my colleagues again, what we have done with the underlying bill is maintain the important role of State insurance commissioners. Rates will be set by insurance commissioners at the State level. Now they are done differently.

I will repeat the point. Under existing law in the 50 States, 40 States presently allow rates on property and casualty in the commercial field to go forward, and then the commissioner can rule that the rate is too high. In 10 States, the State law prohibits any rate increase prior to approval by the State commissioner's office.

Under this bill, we do a number of things. One of the things we do here is follow what 40 States do. In other words, under this, we will allow for rate increases to occur, but we in no way undercut the historic role of State commissioners then to oppose a rate increase. So we maintain a very strong role for the insurance commissioners.

Why? Because, obviously, the expertise is there. They have the shops and the personnel to do it. To all of a sudden allow one Federal regulator, the

Department of the Treasury, to do that would be asking too much, and it would be very difficult for the apparatus to be set up.

Mr. NELSON of Florida. Will the Senator yield for a series of questions?

Mr. DODD. At some point I will, but let me get through my statement. Let me tell you some of the reporting requirements we have here and why this would be.

The Senator's amendment does set up the Secretary of the Treasury to be the regulator. There may be Members who believe that is a progressive step. I think it is dangerous.

Secondly, it would have the effect of a price control, trapping capital for many issues that do not experience a loss attributable to acts of terrorism. I don't think we want to do that. We are not trying to facilitate a clogging up of the commercial process that is ongoing.

Thirdly, with regard to the reports, the Secretary must report to Congress 9 months after date of enactment on the availability and affordability of the insurance for terrorism and a reflection on the impact on the U.S. economy.

The Secretary must report to Congress 9 months after the date of enactment on the availability of life insurance and other lines of insurance coverage. We only deal with property and casualty. There is a legitimate issue being raised about other forms of insurance that we do not cover in this bill.

Also, participating insurance companies must report their terrorism premium rates to the National Association of Insurance Commissioners every 6 months. These reports will be forwarded from the NAIC to the Treasury Department, the Commerce Department, the Federal Trade Commission, and the General Accounting Office. These agencies would submit a joint report to Congress summarizing and evaluating the data they receive from the NAIC. The GAO will report to Congress on its evaluation of the agency reports. We are trying to get as much internal information as we can coming through here so we can provide additional data when it comes to rate increases.

There is a very important point to make about insurance commissioners. Insurance commissioners not only set rates, what premiums can be charged, but in every State they bear the responsibility of seeing to it that insurance companies that do business in their States are solvent. That is a critical issue for consumers. In fact, if they hold policies under an insurance company and that company lacks solvency, then obviously those consumers are in jeopardy of not having their claims paid if some event occurs. I am not just talking about terrorism insurance here. So the dual responsibility of insurance commissioners is to not only set rates, but also to make sure that the companies themselves are solvent.

Again, this is not terribly complicated when it comes to the political questions. It doesn't take a lot to attack an insurance company. That is a safe bet politically. People don't like rate increases, and they know the difficulties they can have when claims are filed.

The problem is, if you are opposed to the idea of insurance companies, vote against the bill. I guess that is a simple answer; it is probably a safe bet if that is your concern. If you are worried at all, as you ought to be, about the fact that banks are not providing the loans to major commercial enterprises because of the absence of terrorism insurance, and you hear, as we have, from the AFL-CIO, as well as others, that there is a growing job loss over this, it is causing a problem economically, and when you already have 10 percent of the commercial mortgage markets and the secondary-market-backed securities already in the first quarter not forthcoming in the bond market, these are signals that we have a problem economically.

If you want the Federal Government to be an insurance company, you ought to vote for the amendment of the Senator from Florida. That is what we did in World War II. If you believe it makes sense in the longer term to have the private sector involved in insurance and not the Federal Government, then it seems to me you ought to vote against this amendment and vote for the underlying bill. That is a choice you have to make. In a few hours, you can make that choice.

The amendment of the Senator from Florida runs the risk of providing a program that I don't think is workable, except for the point I mentioned earlier. I don't disagree with my colleague about having an accounting process that makes it possible for us to distinguish between premiums collected for terrorism insurance and for nonterrorism insurance.

I hope that when this amendment comes up for a vote in about an hour, or less than that, my colleagues will do what I think is the responsible thing to do here, and that is reject this amendment. I have told my colleague from Florida I am happy to work with him on the provision dealing with the accounting question because I agree with him on that. I think we want to have clear accounting so we know what is going on.

With all due respect—and he is a good friend, and I have great respect for him, and I admire the work he did as insurance commissioner of the State of Florida—providing the Secretary of the Treasury the ability to become an insurance regulator goes too far, in my view. To require segregation of these accounts entirely would run the risk of insurance commissioners at the local level being able to guarantee the solvency of these companies to do business in their States, which you know, as a former insurance commissioner, is a critical part of the function of an in-

surance commissioner at the State level.

For those reasons, I strongly urge that my colleagues reject this amendment.

I see my friend from Massachusetts. I am wondering what is on his mind. Let me suspend for 1 minute, Mr. President.

Our colleague from Massachusetts informs me there is a markup of a bill that may require the presence of both the Senator from Connecticut and the Senator from Florida.

Mr. NELSON of Florida. I will be happy to run downstairs with the Senator from Connecticut to make a quorum if we can come back and resume and I can ask the Senator a series of questions.

Mr. DODD. I am always glad to do it. I will be happy to hear the questions. I do not know how well I can respond to them.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DODD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DODD. Mr. President, I have completed my remarks in response to the amendment of my friend from Florida. He has a series of questions, so I will be happy to yield to my colleague for the purpose of asking some questions.

Mr. NELSON of Florida. Mr. President, I thank my colleague. Again, this was another experience where we had to temporarily suspend the debate in order to go downstairs to the Foreign Relations Committee to provide a quorum so we could vote out a very important piece of legislation.

First, I wish to ask a couple of questions about which we agree.

The Senator from Connecticut has a provision in his bill that says:

The participating insurance company provides clear and conspicuous disclosure to the policyholder of the premium charged for insured loss covered by the program.

"Provide clear and conspicuous disclosure." Listen to the language in my amendment with regard to the same issue, and see if the distinguished senior Senator from Connecticut does not think that the language I have would not be something of an improvement by making it a little more specific. I am referring to page 2 of my amendment, line 18. The lead into it is:

If a participating insurance company increases annual premium rates on covered risks under subsection (a), the company—

(2) shall identify the portion of the premium insuring against terrorism risk on a separate line item on the policy . . .

The reason we put that there is it is my experience that if you do not nail down general language and be very specific, it will not end up on the policy on a separate line so that the consumer

can see how much they are being charged for the insured risk, in this case the terrorism risk.

I ask the distinguished senior Senator from Connecticut if he would consider that later on as a perfecting amendment to his language on page 12, the paragraph starting at line 7?

Mr. DODD. Mr. President, as a procedural matter, obviously we are not in a position to do that. I told my colleague in conversations we have had about his amendment that I will be happy to work with him to tighten up, if he believes it is necessary, the language in the underlying bill. Obviously, what is before us is a much larger amendment that covers a lot of other subject matters other than just the issue of separation of accounting.

I will state for the record as well, he may prevail with his amendment. If he does, then obviously all of his language gets included. If his amendment fails when voted upon, then I will be happy to work with him to see if we cannot tighten up the language to such a degree that will satisfy him and satisfy our concerns as well.

At this point, for me, in the midst of a floor action, to work on language is not the most appropriate setting for doing that, and procedurally it is awkward, obviously, with an amendment pending. We have to set that aside and take language, and I prefer we do it in the way I suggested.

If the amendment of the Senator from Florida prevails, the issue becomes moot. If he does not prevail, he has my commitment to work on language to tighten up and do what he wants to do and what we are interested in doing as well, and that is getting a very clear accounting, have a very clear understanding of the difference between premiums collected for terrorism insurance and premiums collected for nonterrorism insurance, so we can have a better understanding over the next 2 years or 3 years, depending on how long this program is going to go if other amendments are adopted.

The Senator already made note of the fact that we are dealing with a 24-month bill, and that is only the second 12 months if the Secretary of the Treasury decides to extend the program for an additional year.

As it is presently worded, this will expire, assuming it is enacted over the next week or two and signed into law, let's say, sometime around the middle of July. Twelve months from now this whole program will be over.

Our fervent hope is that by that time, the costing of this product and the other issues we talked about today will kick in and get the Federal Government out of this entirely and let the private sector deal with this issue as they have historically. But for the events on 9-11, we would not be here. The fact that there was a \$50 billion event, which vastly exceeded what the reinsurance industry could calculate would be the cost, has understandably

caused the industry to back up in terms of its willingness to provide insurance coverage for events they no longer can cost out, at least effectively in their minds, absent, of course, a series of other events which no one knows will be the case.

That is how costing out occurs with natural disasters. After a number of years when you have certain hurricanes, as my friend from Florida knows, it is easier for them to cost events when there are a series of events they can judge over a series of years.

Because this is such a unique event, what happened here—and we hope this is the last time it ever occurs—but in the absence of having a series of events, it is very difficult for them actuarially to determine what costs are in order to set premiums.

I will be happy to work with my colleague from Florida under the circumstances that I have described.

Mr. NELSON of Florida. Will the distinguished Senator from Connecticut yield for a further series of questions?

Mr. DODD. Absolutely.

Mr. NELSON of Florida. Does the Senator's bill require terrorism premiums to be held in a separate account?

Mr. DODD. No, it does not.

Mr. NELSON of Florida. Would the Senator want to propound why it should not be in a separate account?

Mr. DODD. If we look at the accounting and start setting up separate accounts, then in a sense capital is being trapped, and I do not think we want to do that. At least I do not want to do that; others may want to do it. That is one of the issues, solvency.

As a former insurance commissioner, the Senator from Florida knows that no company can do business in his State unless they are solvent, unless they have in reserve adequate enough resources to respond to the claims that can occur from a natural disaster or other types of insurance that may be provided. So solvency is critically important.

If we start segregating accounts, we get into the issue of capital adequacy. So I think I would be unwilling to require segregation of accounts. I think if we have an accounting of them, we would achieve the same result.

Mr. NELSON of Florida. I will merely respond before I ask my next question by saying that we have clearly a separate matter because all the other premiums with regard to all the other risks—be it wind, hail, dog bite, slip and fall, construction malfunction, whatever the risk is—is not subsidized by the Federal Government as we are doing with this bill where the Federal Government is taking a part of the risk.

It seems to me that it makes common sense that since the Federal Government is getting into the business of terrorism insurance in such a big-time way, that we ought to separate out the premiums in a separate account, purely from an accounting function, so there

is no question that those terrorism premiums get commingled with all the other premiums and suddenly we do not know how much that is.

I further ask the distinguished Senator, does the Senator's bill require that premiums collected for terrorism risk be used for terrorism losses only?

Mr. DODD. Responding to my colleague, first, we are dealing with a 2-year bill. This is not in perpetuity. It is over 24 months. To all of a sudden require a whole bunch more segregation of accounts and setting up apparatuses to do it, seems to me, an overreaction. If we were talking about a permanent program, then my colleague's case may have more validity.

If we look back at the language of the bill in our accounting, it requires in the language, as he read, a very clear and conspicuous disclosure to the policyholder of the premium charged for insured losses covered by the terrorism insurance program. Now, clear and conspicuous seems to be about as clear and conspicuous as language could be.

For a 24-month bill, my point would be that we are overreacting by requiring the separate accounting. And not getting into the business of segregating accounts and all of the costs associated with that seems to me to satisfy and should satisfy a majority of us. I think people have looked at this and have the same kind of concerns that our colleague from Florida has raised.

Mr. NELSON of Florida. If the Senator will allow me to continue with another couple of questions, I would merely respond to the distinguished Senator's comments, that here is an example today on the front page of the Washington Post, that we are talking about rates being hiked using the terrorism risk as an excuse. Therefore, I clearly implore the Senate that it makes common sense, if rates are going to be hiked for terrorism risk, make sure it is those rate premiums that are paying the terrorism losses, and not going into the general fund and suddenly all of the premiums get jacked up. If we are going to jack rates higher than the Moon, then let us at least segregate them so they are there for what they are purported to be there for, and that is to pay for a terrorism loss. That is what I would propound to the Senator.

Mr. DODD. In response, I think the story in the Washington Post this morning, in fact, makes the case of why we are here. Those rates are going up on the National Geographic building and on the Washington Post itself. There were several other enterprises. George Washington University, for instance, is mentioned in the article. That is done in the absence of this bill.

As I described apparently not very well a few minutes ago, costing this kind of an event, 9-11, is very difficult. So the insurance industry is out there and it is going to protect itself. We believe with this bill being a backstop for a couple of years we could help put the

brakes on exactly the kind of story the Senator is reading from the Washington Post.

If my colleague is worried about premium rate increases, it seems to me that while our bill is not perfect, there is a greater likelihood we are going to be able to protect consumers more against rate increases having passed this bill, making the case that now there is a backstop so that the kind of exposure that they would be subjected to in the absence of this bill would be less.

If we do not pass this bill, if it is voted against, or a Federal regulator is created and there is a lot of other unnecessary bureaucracy, then we run the risk of not only what happened in Washington happening elsewhere—in fact, it is happening. We already know that terrorism insurance is not available in a lot of places, and where it is, it is very costly. We want to do what we can to stop the tremendous increase in that cost. That is what brings us here. That is why, as well—I made the point earlier and I make it again—we require on page 12 of our bill that there be a very clear disclosure of what premiums are being charged. We put that right in the bill, clear and conspicuous to policyholders, what the premiums are and what the distinction is between premiums collected for that and premiums collected for other forms of insurance.

We do not go as far as my colleague from Florida does by requiring segregation of accounts, but we think that provision for 24 months is a good consumer protection provision, and it will give us the kind of information we need to have.

The three reports I have mentioned are rather extensive involving the National Association of Insurance Commissioners, the GAO, the Commerce Department, the Treasury Department, the Federal Trade Commission, all requiring information be gathered so we can get, within 6 months, some clear indication of how this is working.

In conclusion, I say to my colleague from Florida, I will be the first to admit I cannot tell him that the Senator from New Jersey; the Senator from Maryland; the two Senators from New York, Mrs. CLINTON and Mr. SCHUMER; and I have written a perfect bill. If the Senator is asking me to say that, I cannot say that because we are in uncharted waters in many ways. So we are trying to respond to a problem that exists.

We know for a fact that there is a major slowdown in our economy because major projects have either been cancelled or stalled because they cannot get the financing necessary to go forward. The reason they cannot get the financing is because they cannot get the insurance. Every homeowner in America knows what I am talking about. If they cannot get insurance, then their banker is not going to lend them the money for the mortgage. That is a fact of life. That is just as

true in commercial enterprises as it is in residential.

With the absence of insurance, the banks do not lend the money. The projects do not go forward and there is higher unemployment and a slowdown of the economy.

If my colleague is looking for perfection, I cannot give it to him. All I can tell him is we are trying our best to frame something for 24 months that will reduce the spike in premium costs and have as a backstop the Federal Government, but let the private sector try to solve these crises or problems in the interim, with us getting out of the business as soon as we can.

Mr. NELSON of Florida. Would the distinguished Senator from Connecticut yield for a further question?

Mr. DODD. I am happy to yield.

Mr. NELSON of Florida. The Senator has made much of the fact that this would suddenly be the Federal Government getting into ratemaking. Of course, the Senator would concede, would he not, that this is the first time the Federal Government would be getting into big time insuring an insurance risk?

Mr. DODD. I disagree. Facts will show after World War II we were the insurance company for acts of war. Acts of war occurred in World War II. The Federal Government was the party that paid the claims.

Mr. NELSON of Florida. And acts of war are exempt on every insurance policy that I know of as a covered risk. It is exempt.

I say to the distinguished—

Mr. DODD. I get nervous when he keeps calling me “distinguished.”

Mr. NELSON of Florida. You not only are distinguished, you look distinguished.

Mr. DODD. You have a looking point, as well.

Mr. NELSON of Florida. You sound very distinguished, too, but I want you to answer my questions.

Mr. DODD. Yes.

Mr. NELSON of Florida. The question is, since we have the Federal Government involved big time under your bill, 80, 90 percent of the risk is going to be borne by the Federal Government—

Mr. DODD. My colleague has not read the bill. We are talking about \$10 billion as the deductible level.

Mr. NELSON of Florida. Would the Senator concede under that complicated mathematical formula, often it is a fraction of a percentage of the total annual premium of a company that they will actually pay in an individual company in any one year?

Mr. DODD. My colleague is getting away from the amendment. That is not part of the amendment. Are we are talking the amendment or the underlying bill?

Mr. NELSON of Florida. Underlying bill.

Mr. DODD. It is a formula, a debate. Senator GRAMM may offer an amendment on how you prefer to do it. On

most cases, you have a consolidation. You do not have one insurance company covering one building.

Let me finish. You asked a question and I will respond.

Under the bill, you cannot have all of a sudden some fictitious insurance company getting set up. It is only the companies in existence as of September 11. The rate structures have to be what they were at the time. You cannot have someone taking advantage of this bill to create the phony entities allowing them to take advantage of the situation.

In the State of Florida, talking about something such as Disney World, start talking about the stadiums in Miami, for instance, there is not one insurer that covers those events. There is usually a collection that do. The idea of maintaining solvency which laws require in each State—you could have a smaller company, obviously as part of that. If you get levels where their percentage of the overall amounts are exceeded and the solvency of the company goes under, we have defeated the purpose of the legislation.

There is that distinction between industry-wide and company caps. That is why we drew that distinction.

Mr. NELSON of Florida. Maybe I can ask a question of the distinguished Senator to which he could give a yes or no.

First, I merely point out the fact with the Federal Government being so involved in assuming the terrorism risk, what will be charged for that risk is clearly a legitimate issue for the Secretary of the Treasury with the consultation of the States to determine what you ought to charge for that risk. Particularly given the fact that since this is only a 1-year bill and maybe a 2-year bill by the time you get to the end of that time, the 50 insurance commissioners of the country would not have even had a chance to determine if a rate was actuarially sound. Usually that is done only when the insurance companies file those rates, when, in fact, these rates are already in effect as indicated by this morning's newspaper.

Mr. DODD. Let me say to my colleague, we are doing here what is done in 40 States. My colleague is right; in 10 States they do it differently. We tried to set up a system that made some sense. That is, you are right, the rates go into effect but we still retain the strong involvement of your State insurance commissioners to go forward.

I ask unanimous consent a letter be printed in the RECORD that I received from the National Association of Insurance Commissioners on this amendment and their concerns about the amendment of distinguished Senator from Florida.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

NATIONAL ASSOCIATION OF
INSURANCE COMMISSIONERS,
Kansas City, MO, June 13, 2002.

Hon CHRIS DODD,
U.S. Senate,
Washington, DC.

DEAR SENATOR DODD: I am writing to respond to your request regarding the amendment offered by Senator Nelson of Florida regarding terrorism insurance rates.

While the National Association of Insurance Commissioners (NAIC) has not taken a formal position on the Nelson proposal, I do believe state regulators would have the following concerns:

To our knowledge, the Treasury Department does not have the infrastructure needed to monitor insurance rates as the amendment proposes. Putting such a monitoring mechanism in place could be cost prohibitive particularly when the underlying federal legislation is short-term in nature;

The provisions on refunds of premiums would be very difficult to enforce. Given the uncertainty of risk and the lack of pricing experience, the revised rates could be attributable to a host of other factors related to past or prospective loss cost (the cost of reinsurance, or poor return on investments in recent months), not the potential or historical acts of terrorism, but rather to past and prospective loss costs;

The separate accounting could cause reporting difficulties and added expense for insurers, insurance regulators, and presumably the Treasury Department. The marginal benefits and costs associated with collecting the information could outweigh the benefits that could be derived from the information. For instance, Section (b) requires a separate account for the "premium increases" and it cannot be used for anything but to pay for terrorism losses.

There is no discussion about what happens to the funds after the law sunsets.

At this time, state regulators already have the ability to address this issue, making additional federal oversight unnecessary.

I hope this responds to your concerns.

Sincerely,

TERRI VAUGHAN,
Commissioner of Insurance, Iowa,
President, NAIC.

Mr. DODD. The key paragraphs deal with the underlying issue; that is, the Treasury Department does not have the infrastructure needed to monitor insurance rates as the amendment proposes. Putting such a monitor mechanism in place could be cost prohibitive, particularly when the underlying Federal legislation is short term in nature.

These are the State commissioners. They say:

The separate accounting could cause reporting difficulties and added expenses for insurers, insurance regulators and presumably the Treasury Department. The marginal benefits and costs associated with collecting the information could outweigh the benefits that could be derived from the information.

Lastly they say:

At this time, state regulators already have the ability to address this issue, making additional Federal oversight unnecessary.

Mr. President, does my colleague have additional questions?

Mr. NELSON of Florida. Yes, I do. Is the Senator aware as a matter of practice insurance commissioners of the States basically do not set rates for commercial policies?

Mr. DODD. I understand how it works in different States. My point is, with-

out getting into the minutiae of it, 40 States, as I understand it, allow in the commercial property and casualty area for rates to go forward if a rate request is made. They then retain the right to decide whether or not that rate is one they will accept. In 10 States, as I understand it—and my colleague is a former insurance commissioner so he may have more detail on this—and Florida could be one—do not allow the rate increase to go forward without there being permission by the insurance commissioner ahead of time. That is a general breakdown. Within some States they have ranges of rates, but the point being, the State insurance commissioner is the one that ultimately, one way or the other, decides rates. How each State does it may vary a little bit here and there, but we do nothing in this bill to undermine the ability of the State insurance commissioner to ultimately set the rates if they do it differently. We defer to the States on this issue historically, and we did so again in this bill.

Mr. NELSON of Florida. If I may respond, the NAIC, National Association of Insurance Commissioners, has formally adopted a new version of the property and casualty energy rate and policy form model law which essentially encourages the optional use and file system, which is a system where the companies file what they want without the insurance commissioner having to approve that rate ahead of time.

That is what I am trying to get across to the distinguished Senator from Connecticut. That, in fact, there is not this closely held tight reign out there in the 50 States by the insurance commissioners over what are the rates on commercial policies. When you use that as an excuse to justify not having some kind of mechanism by which we control the rate hikes on terrorism insurance under a bill that the Federal Government is basically going to support, the terrorism risk, it has the potential of taking the rates to the Moon.

Mr. DODD. I defer in some ways because my distinguished friend and colleague from Florida served as an insurance commissioner for the State of Florida. We asked the National Association of Insurance Commissioners to respond to the proposal. All I can tell you is that in this letter from the NAIC, the last line of their letter to me says:

At this time—

Again, they are working on the issue. My colleague has conceded that point—the State regulators already have the ability to address this issue, making additional Federal oversight unnecessary.

I don't know what else you do. I do not always agree with them on every point. But it seems to me if the State insurance commissioners are satisfied that they are in a strong enough position to deal with this, whether or not they do in each State, I don't know what else you do. I know my colleague knows there may be some who are less

strong than others on this point. But the choice is either relying on the existing structure to set rates or set up a new operation of the Department of the Treasury, for maybe 12 months—and we all know how long that could take—even if you wanted to defer to the Department of the Treasury. We could spend months with them putting together an apparatus to do so.

Again, if the intention here is perfection, I am not the guy. This is not the right bill. If you are asking those of us who sat down to try to work and fashion something that we think would be the right step forward, then I think we have done it here. If we have not, we are going to have to come back to this issue.

All I can say to my colleagues in good faith is we think we have done the right job. It is not all inclusive. We don't deal with workers' compensation in this bill. That is a huge issue. My colleague from Nebraska, the other Senator NELSON, has an amendment requiring some studies on life and other issues we do not cover in this bill that, frankly, are major gaps. But we just did not believe we could take on all of that under these circumstances. We tried to keep as focused as we could, knowing that the cost was, on September 11, a minimum of \$50 billion. We know today that reserves could only accommodate about 20 percent of that event. That is a fact. And we know there are projects and jobs being lost every day in the absence of some kind of a backup, which is what we tried to craft.

I hope my colleagues will understand we have put together what we think is the best proposal. We urge them to be supportive of it.

I have great respect for my colleague from Florida and his passionate concern. He rightly points out the sense of people's anger, frustration, and anxiety over rate increases that go on all the time. It is terribly frustrating.

Certainly for people in Washington, DC, already we know the costs are going up. I wish I could wave a magic wand and make it go away. I think the best we can do, as I said, is to pass this bill, and then the justification for those cost increases, at least of the magnitude we may be seeing, is certainly going to be minimized by providing some backup to this issue.

For those reasons, I urge the rejection of this amendment at the time the vote occurs.

I see my colleagues from Nebraska and New Jersey. I do not know if they have any comments they want to make on this bill. If not, I can note the absence of a quorum. But if they want to be heard, I will be happy to yield the floor.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. NELSON of Nebraska. I thank my colleague from Connecticut for putting together, with the assistance of a lot of folks, a bill that I think can help take off some of the pressure.

Mr. DODD. I made a mistake. We do deal with workers' compensation here. I am sorry. We do not deal with life.

Mr. NELSON of Nebraska. I thank my colleague for a very able job, putting together a bill with the assistance of a lot of individuals who have had a lot of experience dealing with these issues.

S. 2600 is a bill that I think can help bring some balance to the whole area that we today recognize as being imbalanced because of the events of September 11. The effects on our economy, our society, and our national psyche can never be overstated. They have adversely impacted the Nation's sense of security and stability, and our lives have been permanently changed in so many different ways that we could not have anticipated.

One cannot overstate the effects upon the families who lost their loved ones or those affected in other ways by the actions of the small number of terrorists, terrorists sworn to the destruction of the American way of life and for all that we stand.

There is not any way to return to the days before September 11, nor can we return the stability of our lives simply on the basis of economic decisions we make today. But I think we can begin the process of slowing down the impact, the adverse impact on our economy.

Congress can now act to help stimulate the weak economy and further avoid the negative consequences with this Federal backup, this "backstop" for catastrophic losses resulting from acts of terrorism in the future. By enacting this legislation, I think we can in fact see a turnaround in our commercial real estate market, mortgage lenders, the construction industry, and other segments of our economy.

This is a jobs bill, pure and simple, to make certain that our economy will in fact respond appropriately and positively rather than be adversely affected by the continuing lack of availability and a growing lack of availability of the property and casualty and workers' compensation coverages that are so important to the future of our economy. We must in fact respond to that.

I have learned firsthand the necessity of insurance in the commercial world. As a former insurance regulator, as someone who has been involved in the insurance business, or the field of insurance regulation, virtually all of my working life, with the exception of my public service as Governor and here in the Senate, this is not so much about—

The PRESIDING OFFICER. Under the previous order, the vote is to occur at 3:15 on the amendment, with 10 minutes equally divided prior to that vote. We are at that point now.

Mr. DODD. Mr. President, I will yield my 5 minutes to the distinguished Senator from Nebraska in opposition to the Nelson amendment. I have already spoken about it. Then Senator NELSON will have 5 minutes in support of his amendment.

I yield my time to the distinguished Senator from Nebraska.

The PRESIDING OFFICER. The Senator from Nebraska is recognized for an additional 5 minutes.

Mr. NELSON of Nebraska. Mr. President, what I am concerned about is if we adopt the current amendment to the underlying bill, while there is a temptation to try to control rates, it is absolutely antithetical to try to control rates at a time when we are not going to control the issuance of the coverage. We get the odd effect of not saying you must write it—and I hope we never get to the point of saying you must write this insurance, this line of coverage, that we never get to the point where that has to be required—but at the same time, if we say the rates are controlled, this market I do not think will continue to respond or have the opportunity to respond as if we passed the underlying bill without this amendment.

I respect a great deal my colleague from Florida, my namesake, who has had similar experience to mine. But my experience has been different. That is, if we try to control the rates, if we try to create a quasi-Federal rate control structure for a very short period of time, or for a long period of time, we will not enhance the availability of insurance, we will get just the opposite result.

Therefore, I hope as we look at this amendment today—and it pains me to take issue with my friend from Florida, but I must in fact say this—it will not enhance the availability of insurance, in my opinion and from my experience, but it will in fact deter the growth of the market. It will help reduce the availability of the coverage and not enhance it, as does the underlying bill as it is right now.

Whereas it may be amended by other amendments, and I intend to offer one that in fact will enhance the availability of more terrorist coverage in the commercial lines in those areas that are currently being so adversely affected and impacted by the absence of this backstop, it is about jobs, it is about the economy, less so about insurance.

Mr. President, I yield the remainder of my time to the distinguished Senator from Connecticut.

Mr. DODD. Madam President, in the interest of time, I yield my time and leave the remaining time to the proponent of the amendment.

The PRESIDING OFFICER (Mrs. CARNAHAN). The Senator from Florida. Mr. NELSON of Florida. Madam President, I would like to close on my amendment.

This has been a good debate. Again, although I have serious reservations about this legislation, I did not prevent it from coming to the floor, which I could have done last night.

I appreciate the distinguished Senator from Connecticut engaging in the colloquy, the series of questions and answers. I hope it is better understood.

Now I would like to make a couple of points before we vote on the amendment, and I will ask for the yeas and nays.

First of all, I want to correct something the distinguished Senator from Nebraska said.

In fact, terrorism insurance under this bill is mandatory. That is the whole point of setting the system up whereby the Federal Government is coming in and backstopping insurance companies. It is mandatory for all commercial property and casualty insurance. The insurance is there. The Federal Government is picking up most of the tab. If the loss occurs, who is paying? The consumer is paying through the premiums that have already been hiked as chronicled daily over the last 6 months, including this one in today's paper talking about a 300-percent increase in the last 6 months. That, in fact, is what has happened.

What should we do about it? We have to make insurance available. That is part of the reason for the underlying bill. But we also have to make it affordable.

When rates get hiked 300 percent, you are getting to the precipice of whether it is affordable.

Don't just think it is the big real estate conglomerates that are having trouble getting this insurance. This affects small businesses as well. Whatever the size of the business, these rate hikes are going to be passed on to the consumers as a cost of doing business. The huge rate hikes are going directly to the consumers.

I reiterate that consumers and taxpayers do not like to have their Senators voting to increase their taxes. Let me tell you what they do not like even more: They do not want their Senators approving legislation that causes rate hikes to be etched into law.

I come forth humbly and respectfully with an amendment that says we are going to put a process in place—that we are going to put this process in place that says the Secretary of Treasury is going to consult with the NAIC and other Federal agencies as to what ought to be the range of a rate hike or rate decrease, whatever is warranted; and, furthermore, where there has been the huge increase already, but then the Secretary says the rate increase ought to be there or not there for the remainder of that policy, that difference has to be rebated to the policyholder.

Naturally, this is stepping on some toes because it not only puts a process of logic in the handling of rates, but it causes rebates to go back where the rates have been determined to be excessive.

Senators, hear me. This is a dangerous vote. Watch out what you are voting on as you vote on the Nelson amendment.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

Mr. REID. Madam President, I move to table and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from California (Mrs. BOXER), the Senator from Hawaii (Mr. INOUE), and the Senator from Vermont (Mr. JEFFORDS) are necessarily absent.

I further announce that, if present and voting, the Senator from California (Mrs. BOXER) would vote "no."

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), the Senator from Idaho (Mr. CRAPO), and the Senator from Virginia (Mr. ALLEN) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 70, nays 24, as follows:

[Rollcall Vote No. 153 Leg.]

YEAS—70

Allard	Edwards	Murray
Bayh	Ensign	Nelson (NE)
Bennett	Enzi	Nickles
Bond	Feinstein	Reed
Breaux	Fitzgerald	Reid
Brownback	Frist	Roberts
Bunning	Gramm	Santorum
Burns	Grassley	Sarbanes
Byrd	Gregg	Schumer
Campbell	Hagel	Sessions
Cantwell	Harkin	Shelby
Carnahan	Hatch	Smith (NH)
Carper	Hutchinson	Smith (OR)
Chafee	Hutchison	Snowe
Cochran	Inhofe	Specter
Collins	Kerry	Stevens
Conrad	Kyl	Thomas
Corzine	Lieberman	Thompson
Craig	Lott	Thurmond
Daschle	Lugar	Voinovich
DeWine	McCain	Warner
Dodd	McConnell	Wyden
Domenici	Miller	
Dorgan	Murkowski	

NAYS—24

Akaka	Feingold	Levin
Baucus	Graham	Lincoln
Biden	Hollings	Mikulski
Bingaman	Johnson	Nelson (FL)
Cleland	Kennedy	Rockefeller
Clinton	Kohl	Stabenow
Dayton	Landrieu	Torricelli
Durbin	Leahy	Wellstone

NOT VOTING—6

Allen	Crapo	Inouye
Boxer	Helms	Jeffords

The motion was agreed to.

Mr. DODD. Madam President, I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DODD. Madam President, I know my colleague from Nevada wants to be heard for a few minutes as in morning business. I will make an appeal here, as I see the leader on the floor. I only know of a couple more amendments at this point. Maybe there are more. If there are, I would like to know about them so I can have some idea and let the leader know, or give the leader an idea as to how we are going to be proceeding.

I know Senator GRAMM may have an amendment. I gather that Senator

HATCH's may be withdrawn. I know there is an amendment by Senator LEAHY. There will be a colloquy between Senator COLLINS and Senator BEN NELSON. My colleague from Oregon, Senator WYDEN, has an interest in an amendment as well. Senator NELSON of Florida also has an amendment we may try to take up.

Those are the parameters at this point. There may be other amendments. If there are, let's get some sense of it so the leader can set a schedule.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. DASCHLE. Madam President, if it is possible to go to third reading tonight or tomorrow morning, I would like to entertain that. The sooner we can do that, the better. Colleagues are interested in taking up the Defense authorization bill. That is something we hope we can take up very quickly. There are other issues out there that have to be addressed. So if it is possible to go to third reading tonight, I would like to be able to do that very much. If there are additional amendments, this is the time to offer them, or we will move to third reading shortly.

I urge my colleagues to come to the floor and dispose of their amendments so we can bring this bill to closure and move on to other matters of great priority before we leave for the Fourth of July recess.

I yield the floor.

Mrs. CLINTON. Madam President, I am here to express very strong support for S. 2600, the Terrorism Risk Insurance Act of 2002. I know we have had debate and a couple of votes, but I want to underscore how important this legislation is to the State of New York and to the ongoing economic challenges we confront because of September 11.

This legislation provides a temporary Government-industry program for sharing property and casualty insurance losses; in short, what is called a Government backstop. The loss sharing program would run for just 1 year, although it could be extended for an additional year.

We are only talking about a temporary fix until the marketplace gets back on its feet and we get a reinsurance industry that is willing to backstop the insured and their losses. I hope all of my colleagues understand how significant this legislation is to so many industries and particularly in the State of New York.

Under the legislation, if there were a terrorist attack that results in more than \$5 million in insured losses, insurance companies would collectively cover total losses of up to \$10 billion. Companies would contribute to that \$10 billion amount based upon their individual market shares.

If the losses exceeded \$10 billion, but were less than \$20 billion, then the Federal Government would pay 80 percent of the losses and the insurance industry would cover 20 percent. If the losses were more than \$20 billion but less

than \$100 billion, the Federal Government would pick up 90 percent and the industry would cover 10 percent. And if there were more than \$100 billion in losses, the Secretary of the Treasury would notify the Congress, and we would then determine how losses over that huge amount would be covered.

All property and casualty insurance, except crop and mortgage insurance, would be covered. The bill would also cover not just insurance companies, but also those which self-insure, which includes many businesses in New York and across the country.

I have heard so many concerns expressed by businesses in New York. I have heard it from the real estate industry, from the Association for a Better New York, which is the equivalent in many ways of the Chamber of Commerce in New York City, from New York City Partnership, which also acts to bring businesses, large and small, from all different sectors of the economy together to speak with one voice. But throughout New York City and throughout New York State, throughout certainly the larger New York area, which includes New Jersey and Connecticut, the problems associated with obtaining terrorism insurance have become a matter of great immediacy and urgency.

In fact, the department of insurance superintendent, Gregory Serio, has recently met with me to confirm that it is not just individual companies that are running into problems, it is a systemwide challenge to the fundamental concept of being able to provide insurance for our businesses.

Mr. HATCH. Will the Senator yield for a unanimous consent request?

Mrs. CLINTON. Certainly.

AMENDMENT NO. 3839 WITHDRAWN

Mr. HATCH. Mr. President, I withdraw my amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

The Senator from New York.

Mrs. CLINTON. I want to give one example. I could literally give so many examples in this Chamber because they have flooded into my office and come to my attention and to my counsel's attention for weeks now. Francis Greenberger of Time Equities, Inc., a real estate investment firm, has confirmed to me that the insurer they had before September 11 required their company to buy terrorism insurance for four properties: three in New York and one in Madison, WI, an apartment building.

They were required to insure the property in Madison, WI, against terrorism, despite the fact that it is clearly not near New York City. It is not an area where there have been a lot of threats, but, nevertheless, in order to get the terrorism insurance where it was needed in New York, the four properties were lumped together.

The cost of the insurance premiums for these properties rose from \$191,500 pre-September 11 to \$664,300, an increase of 347 percent. Even with these

exorbitant premiums, the amount of terrorism insurance coverage that the company received for these much higher premiums was actually 50 percent less than the amount of coverage it had previously received.

In addition, the new policy excluded bioterrorism and nuclear attacks and had a deductibility of more than \$1 million. By any standard, that is a terrible burden to try to absorb, especially during an economic downturn in the wake of the terrorist attack on New York.

That is not by any means a unique story. I have heard many like it from not only real estate holders but construction contractors, stadium owners, sports teams, amusement park owners, banks, and not just in New York but people who do business, literally, all over the country.

The lack of insurance has affected the ability of many developers to close real estate deals, to complete old ones and to start new ones. So at least in our part of the world new offices, residential buildings, new hotels, and new entertainment centers are either on hold or being forced to expend much more money than any reasonable assessment of the risk should call for.

In addition, we know the reinsurance market ends on July 1, so there is urgency for us to act. I appreciate my colleagues on both sides of the aisle who are working to get this legislation passed. It is not only the private sector; it has also been a real challenge for hospitals. Again, the New York insurance superintendent has reported that hospitals were the first New York business to experience significant difficulties in obtaining adequate and affordable property coverage for their facilities.

We also have problems with our major philanthropic organizations. They operate hospitals. They operate museums. We have an across-the-board problem in getting the kind of insurance that is required, and, in many instances, what has been offered is far from adequate. Many, as I said, exclude certain kinds of terrorism. They tighten up the definition of occurrence. Then they jack up the prices so that it is not affordable anyway, even though it is not very good coverage. In many cases, the insured has no choice.

I do hope we are not only going to pass this and pass it as soon as possible, but that we will recognize another area of difficulty, and that is with respect to workers' compensation coverage. Under New York law, primary insurers providing workers' compensation coverage cannot exclude terrorism coverage. Therefore, many primary insurers are dropping their insureds and refusing to offer workers' compensation anymore at all.

I understand it was the intention of Senator DODD that workers' compensation insurance would be covered by this bill under the general rubric of commercial lines of insurance. I have some concern, however, because a number of

types of insurance are specifically defined, but workers' comp is not. I understand, though, that Senator DODD will address this issue and will make it explicitly clear that workers' compensation coverage is also covered by this legislation. I wish to thank Senator DODD and his staff for recognizing this potential oversight and moving to remedy it.

In conclusion, I am delighted that this bill is finally being debated. Many of us have been urging that it arrive as soon as it could. We are now right in the crunch period because reinsurance in most instances disappears in just a few weeks on July 1. Workers' compensation is not even being written right now in New York in many instances, so we must move.

I have said from this floor many times in the last months that when New York was attacked, it was an attack on America. The economy of New York is absolutely crucial to the full recovery of America, and there is no more important legislation than the one we are considering now to ensure that economic activity resume at the highest possible level and that we not only put New Yorkers back to work but that, because of the dynamism of the New York economy, we send out that energy that will get our national economy moving in the right direction as well.

So I thank the sponsors. I look forward to the vote on this, and I appreciate support for this important legislation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, while the majority leader is on the floor, I want to certainly recognize the fact that this is an important piece of legislation. We have been told that people have wanted this for months, going back to last December. Here it is, Thursday afternoon and there is no one else on the Senate floor.

As the majority leader said and as I have tried to say in representing what the majority leader has said to me, really we have to move this legislation along. There is so much left to do without our being here doing nothing.

I would say as the leader said this morning, if there are no amendments, maybe we should move to third reading, if people do not have amendments to offer. The majority leader has been very generous saying people should have the opportunity to offer all the amendments they want. There will certainly be no rush to filing a motion for cloture.

But I just say to the majority leader, I hope everyone heard what the majority leader said earlier today, that we have to move ahead. Here it is Thursday afternoon and nothing is moving.

Mr. DASCHLE. Mr. President, if I could respond to the distinguished assistant Democratic leader.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. He is absolutely right. I have indicated to the distinguished Republican leader it was not my intention to file cloture today, even though obviously that is the prerogative of the majority leader. We have no designs to do that. But we also recognize that we have a lot of work to do. It is not my intention to file cloture today. I hope colleagues who have amendments will offer them and we can have votes on them. If there are no amendments, we will move to third reading sometime very soon.

If there are objections to moving to third reading, our colleagues are going to have to come over and physically object. We cannot waste what is valuable time on the Senate floor waiting for Senators to offer amendments if there are none. So we will make our best effort to determine the degree to which there are Senators who still wish to offer amendments. Time is running out. We will move to third reading shortly if no amendments are offered.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

GRANDPA DASCHLE

Mr. BYRD. Mr. President, with great pleasure, I call attention to a new Democrat's having been brought forth in this Congressional election year. With even greater pleasure, I point out that our distinguished majority leader has become a grandfather for the first time.

This new Democrat, Henry Thomas Daschle, arrived with the angels last Friday. Being a Democrat, I always welcome a new member to our party. Being a grandfather, I know the joy and pleasure that a grandchild brings.

There is nothing so wonderful as cradling in your arms a swaddled baby. It awakens in one so many emotions. It is a one-of-a-kind experience. A newborn fairy glows with freshness and the promise of the life to come.

But a grandchild is beyond special, and the birth of one's first grandchild is an experience nearly beyond verbal description.

The birth of one's own child is tempered by a certain apprehension. With this fragile baby, there also comes the responsibility of protecting and molding a tiny, dependant creature until adult status arrives. Parenthood is truly a delicate balance of bounteous love and serious responsibility.

But to become a grandparent and to see oneself being projected on, on into the eons in the future, one has really reached his first plateau of immortality. It is a higher plateau. It is a completely different kind of experience. It is pure joy. As a grandparent,